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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God most high, You rule forever and supervise the nations with justice. We thank You for Your grace and mercy. You are faithful to all who depend on You. Keep us from the gates that lead to ruin.

Bless our Senators; empower them to speak for justice, to love mercy, and to embrace humility. This day, give them the wisdom to plant seeds that will produce a bountiful harvest in the months ahead. Keep them in Your care and make certain that each step they take is sure.

Bless the members of each Senator's staff. Give each of us love that will follow You into a bright future. We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 9, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning, following the 60 minutes of morning business, we will resume debate on the bankruptcy legislation. Yesterday, by a vote of 69 to 31, we were able to invoke cloture on the bill; therefore, we will finish the bill this week. Once we return to the bill this morning, there will be 40 minutes of debate prior to a series of votes on four of the pending amendments. These four votes can be expected to begin at around 11:30 this morning.

We will continue to work through the pending germane amendments to see which are ready for rollcall votes. And I presume we will have another series of votes later on today. We encourage Senators who have pending amendments to review whether they really need to ask for a recorded vote on each of their amendments. Perhaps we can further limit the number of amendments that will require rollcall votes so we can finish this bill at a reasonable hour, even today.

I thank my colleagues for their hard work on the bill. We are on the cusp here, on the verge of completing another very important piece of legislation in the early part of this Congress. We would like to wrap it up today if at all possible.

Mr. President, I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes with the first 30 minutes under the control of the majority leader or his designee and the second 30 minutes under the control of the Democratic leader or his designee.

Who yields time?

The Senator from the great State of Tennessee.

Mr. ALEXANDER. Thank you, Mr. President. I ask unanimous consent to speak for up to 10 minutes in morning business.

The ACTING PRESIDENT pro tempore. The Senator is recognized for up to 10 minutes.

MAJORITY RULE FOR CONFIRMING JUDGES

Mr. ALEXANDER. Mr. President, during the last session of Congress, Senators on the other side of the aisle blocked an up-or-down vote 20 times on 10 of President Bush's nominees for the Federal appellate courts. Filibusters were threatened against five more judicial nominees. With one possible exception, this has never happened before. The Senate has a 200-year tradition of majority rule when it comes to confirming judges. In fact, until the last session of Congress, the idea of not voting on a President's judicial nominee once it reached the floor was unthinkable.

It would be difficult to imagine a case in which passions ran higher than during the confirmation proceedings for Justice Clarence Thomas in 1991. Yet President Bush nominated Clarence Thomas in July of 1991, and 3

months later the Senate voted to confirm him, 52 to 48. There was never any discussion of blocking his nomination by blocking an up-or-down vote.

So in the spirit of compromise, I would like to, once again, offer my solution for avoiding what some in the minority call the ''nuclear option'' that would change Senate rules to prevent filibusters of President Bush's judicial nominees.

In an address on this floor 2 years ago, on March 17, 2003, I said I would reserve the right to vote against any judicial nominee of any President but that I would not filibuster the qualified court nominee of any President. That was before I knew whether the President would be named Bush or Kerry.

This is what I said then:

Before I finish my remarks, I make this pledge. I may be here long enough, and I hope it is a while, before I have an opportunity to cast a vote for a nominee for a Federal judgeship that is sent over by a Democratic President, but I can pledge now how I will cast my vote. It will be the same way I appointed 50 judges when I was Governor. I look for good character. I look for good intelligence. I look for good temperament. I look for good understanding of the law and of the duties of judges. I will look to see if this nominee had the aspect of courtesy to those who come before the court. I will reserve the right to vote against some extremists, but I will assume that it is unnecessary and unethical for the nominee to try to say to me how he or she would decide a case that might come before him or her. When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide.

That is what I said 2 years ago. I also said:

In plain English, I will not vote to deny a vote to a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

Mr. President, that was my pledge 2 years ago. That is my pledge today. And if a few other Senators of both parties would individually make this same pledge to eventually allow up-or-down votes on all judicial nominees, then there would be an end to this discussion of the so-called nuclear option.

I have no doubt that changing the Senate's cloture rule by a majority vote is clearly constitutional. Some have argued that the Senate's cloture rule, which allows just 41 of us to block up-or-down votes, carries over from one Congress to the next by rule V. But no less an authority than the distinguished Senator from West Virginia, when he was majority leader, argued very persuasively and with great common sense that this is not true. He said:

This Congress is not obliged to be bound by the dead hand of the past. The first Senate, which met in 1789, approved 19 rules by a majority vote. Those rules have changed from time to time. . . . So the Members of the Senate who met in 1789 and approved that first body of rules did not for one moment think, or believe, or pretend, that all succeeding Senates would be bound by that Senate. . . . It would be just as reasonable to say that one Congress can pass a law providing that all future laws have to be passed by two-thirds vote. Any Member of this body knows that the next Congress would not heed that law and would proceed to change it and would repeal it by majority vote.

That was the Senator from West Virginia talking. So, very simply, the Constitution provides that 51 Senators can change Senate rules to allow a majority to cut off debate on a President's nominee of an appellate court judge.

Now, that does not mean that we ought to rush to make a change in that way. To extend the analogy, nuclear weapons have been effective in world history because of the threat of their use, not because of their actual use. And that has been true here on this Senate floor.

In the debates on the adoption of Rule XXII on the Senate floor in 1917, and later modifications in 1953 to 1959, and then 1960 to 1975, the debate and eventual compromises were driven by the threat of the constitutional option, which we are discussing today.

The chairman of our Judiciary Committee, Senator ARLEN SPECTER, has said he ''intends to exercise every last ounce of [his] energy to solve this problem without the nuclear option.'' I hope he will continue that effort.

The Senate protects the minority party's rights for a reason. In writings about early America, Alexis De Tocqueville warned that one of the potential failings of democracy would be the ''tyranny of the majority.'' South Africa succeeded in creating a constitutional government because the new Black majority was willing to protect the minority rights of White citizens. As we watch the people of Iraq struggle to create a constitutional government, we know that a major sign of their success will be whether they are able to include and protect the rights of Sunnis who are only 20 percent of the country but who formerly dominated the country.

I can remember back when I came here as a legislative assistant to Howard Baker in the Senate in 1967, Republicans were the ones worrying about protecting minority rights then. There were 64 Democrats and 36 Republicans. And then, 10 years later, when I came back to the Senate as an aide to Senator Baker for a few months, when he was elected Republican leader, there were 38 Republicans. In 1979, when the distinguished Senator from West Virginia made his persuasive argument that a majority of the Senate could change Senate rules, there were 58 Democrats and 41 Republicans.

So just as our Republican majority should be cautious about making changes that would lessen minority rights, I would respectfully suggest that the Democratic minority should be equally cautious about provoking such a change.

One way, of course, to avoid provoking rules changes would be for the Democratic Senators who opposed the President's nominees in the last session to look them over again and reconsider their basis for opposition.

For example, I believe if some of the Senators on the other side would really study the record of Judge Charles Pickering of Mississippi, they would be impressed with his commitment to civil rights. At a time when it was hard to do, he testified against a grand wizard of the Ku Klux Klan in 1967, and did it in open court. At the same time, he put his children in public schools when many White Mississippians were putting their children in what were called ''segregation academies.''

Any Senator who carefully looks at the record of former Attorney General Bill Pryor of Alabama, I believe, would admire his record on civil rights. He was a law clerk for Judge John Minor Wisdom, probably the leading civil rights Federal judge of the last century. Bill Pryor showed, as attorney general, he could take a position on abortion, on prayer before football games, on reapportionment, and on displaying the Ten Commandments that were at odds with his personal views because he believed the decisions of the Supreme Court and the U.S. Constitution required it.

Both Judge Pickering and Judge Pryor have served in recess appointments and have even more of a record now to consider favorably.

But the other way to avoid a lengthy and damaging procedural battle is simply for individual Senators now to declare their willingness to support allowing an up-or-down vote of any qualified nominee for the bench by any President. This would apply to this Republican President's nominees or to some future Democratic President's nominees.

I do not know what terrible grievances in the past have caused such strong feelings on the other side causing them to take these unprecedented steps to block an up-or-down vote on nominees once the nominee gets to the floor. As I say, there is a 200–year tradition—a 200–year tradition—in this body of then moving to an up-or-down vote.

It never happened before like this. And if it continues, even though I hope it does not, it will almost certainly force a Senate rules change. I hope we don't come to that. I have suggested two ways to avoid it. I have taken a step myself to forgo some of my rights as an individual Senator as one way to help solve the problem. I hope others will do the same.

I ask unanimous consent that my remarks from March 17, 2003, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. President, I am a new Senator. I am aware of the traditions of the Senate, one of which is that a new Senator is not expected to say much—at least throughout the year is not expected to say much—to begin with until they have something of importance to

say. So I have not said much. I had been planning to make my first remarks on this floor next Tuesday on the issues I care most about, which are the education of our children and putting the teaching of American history and civics back in its rightful place in our schools so that our children can grow up knowing what it means to be an American. I planned on doing that next Tuesday. But I have decided to make some remarks today—earlier than expected because I am disappointed in what I have heard in the debate about Miguel Estrada.

Like my friend from Missouri, I have had the opportunity to preside in the last few days. That is one of the honors that are accorded new Members of the Senate. I have been listening very carefully. My disappointment has increased with each of these 10 days as the debate has continued.

I am disappointed first because I believe our friends on the other side of the aisle are being unfair to Miguel Estrada. I am most disappointed in them because I believe if the direction of this debate continues as it is going—and I heard the comments of my friend from Missouri yesterday on this same matter—if we continue in the same direction, we run the risk of permanently damaging the process by which we select Federal judges and by which we dispense justice in the United States. I am disappointed because this is not what I expected when I came to the Senate.

I may be new to the Senate, but I know something about judges. I am a lawyer. I once clerked for a U.S. Attorney General. His name was Robert Kennedy. I once clerked for a great Federal appellate judge. His name was John Minor Wisdom of New Orleans. I once worked in this body 36 years ago for Senator Howard Baker, a great lawyer. I watched this body as it considered and confirmed men and women to the Federal courts of this land. As Governor of Tennessee for 8 years, I had the responsibility of appointing—and did appoint—nearly 50 men and women to judgeships all the way from chancellorships to the supreme court.

I know pretty well the process we have followed in the Senate and in this country for the last couple of centuries.

It is fairly simple. It can be expressed in plain English. The Executive nominates, the Senate considers, and then confirms or rejects the nomination; and in doing so, what the Senators have always looked for, mainly, has been good character, good intelligence, good temperament, a good understanding of the law and the duties of a judge, and whether a nominee seems to have courtesy for those who may come before him or her. And it has always been assumed that it is unnecessary—and, in fact, it is unethical by the standards of most of the judicial canons in this country—for the nominee to try to say how he or she would decide a case that might come before him or her.

Then, after all that examination is done in the Senate, there is a vote. And under our constitutional traditions, the majority decides.

I have been listening very carefully, and that is not what is happening. The other side has simply decided that it will not allow the Senate to vote on the nomination of Miguel Estrada. In doing so, it is doing something that has never been done for a circuit court of appeals judge in our Nation's history.

In those hours that I have presided over this body in the last few days, I have been listening very carefully to see what reasons our friends on the other side could give for coming to such an extraordinary conclusion about whom I have come to learn is an extraordinary individual, Miguel Estrada.

I have been listening carefully for the answers, especially to these three questions: No. 1, what is wrong with Miguel Estrada? What is wrong with him? No. 2, why can't we vote on Miguel Estrada, after 10 days of debate? And, No. 3—most importantly—why should we change the constitutional tradition that a majority of the Senate will decide whether to confirm Miguel Estrada? Because what they are saying, really, is that he will need to get 60 votes—60 votes—instead of 51.

I have had the privilege of listening to each of their arguments. As my friend from Missouri knows, they first try one argument, and it does not go so well. Then they move to another argument, and it does not stand the light of day. And then they move to another one.

But let me tell you what I have heard as I have listened to the debate.

First, they said—it would be hard to imagine that anyone could say this with a straight face, but we had many straight faces on the other side of the aisle saying this—that he was not qualified to be a Federal appellate judge.

You do not hear that argument very much anymore because that is almost a laughable comment if it were not such a serious matter.

But let's go over this. This man isn't just qualified; if this were sports, he would be on the Olympic team, and he would be getting an award for ''American Dream Story of the Year.''

Here is a man who came to this country at age 17 from Honduras. He had a speech impediment. He spoke very little English. And within a short period of time, he was attending Columbia University, one of the most prestigious universities in America.

Then he went to Harvard Law School. Now, it is really hard to get into Harvard Law School. It has great competition. Everyone who is applying to a law school around the United States of America this year—and I know a great many of them—think about it. This young man, in a few years, was admitted to Harvard Law School. And not only that, he became an editor of the Harvard Law Review and graduated magna cum laude.

This is a dream resume, but it is not even over.

Then he went to the Second Circuit as a law clerk. Then he became a clerk for a Supreme Court Justice. By now he was in the top 1 percent of 1 percent of all law school students in the country, with the kind of resume for a lawyer every law firm in the country would want to hire. He has a record that almost everyone would admire.

Then he went to the Southern District of New York, one of the most competitive places, to be hired for training there.

Then he was in the Solicitor General's Office. To those who are not lawyers or who do not keep up with this sort of thing, just being in the Solicitor General's Office might not sound like such a big deal, but those are the plum positions. The way I understand that office, there are a couple of political appointees there—the Solicitor General and his Deputy—and there are about 20 career lawyers. Miguel Estrada was one of those lawyers. They are there because they are not just good, they are the best in America. They have the best resumes. They have been the clerks to the Supreme Court Justices. They are going to be the greatest lawyers. It is the most competitive position in which you can be.

And there he is, Miguel Estrada, coming here at age 17, barely speaking English, making his way into there. He worked there for the Clinton administration and the Bush administration. Then he went to one of the major law firms of America. And he has argued 15 cases before the Supreme Court of the United States.

That is an incredibly talented record. There is almost no one who has been nominated for any judgeship in our country's history who has a superior record. For anyone to have even suggested for 15 minutes that Miguel Estrada is not superbly qualified to be a member of the United States Court of Appeals—for anyone to even suggest that—it is difficult to see how one could do that with a straight face.

Little has been made about what he did in the Solicitor General's Office. I think it is worth talking about that. These talented young men and women have the job of helping the Solicitor General make decisions about what to do in cases in which the United States is a party. That means they review all the decisions that come against us, the United States of America. They are the lawyers for us, the United States of America.

They write memoranda and they write opinion and they must argue back and forth. And they must argue about every side of every issue. And our friends on the other side have come up with straight-face argument No. 2, which is that somehow Mr. Estrada, who does not even have all those memoranda, should be penalized because the U.S. Government does not want to hand those memoranda, that were exchanged back and forth between the various Solicitor General's assistants, over to the Senate.

We have never done that. There are seven living former Solicitors General of the United States, and seven—all of them—have written a letter to this body saying that has never been done, and it never should be done, for obvious reasons. If it were done, you would never have any straightforward memoranda left in that office. It protects us, the United States. And that never should even be considered to be held against Mr. Estrada.

So is he qualified? It is hard to imagine someone who is better qualified. I consider it a great privilege to come to the Senate and find a President who discovered such an extraordinary person to nominate for the Court of Appeals for the District of Columbia Circuit. Such a story should give inspiration to men and women all over America, that this is the country to which you can come, regardless of race or background or whatever your condition, and dream of being admitted to the best universities, finding the best jobs in a short period of time, and being nominated by the President of the United States for such a court.

What a wonderful story. And what an embarrassing event it is to have our friends on the other side to even take the time of this Senate trying to suggest such a person is not qualified. So let's just throw that argument away and put it in the drawer.

Since that argument did not fly, they then moved to argument No. 2, which is equally difficult to offer with a straight face, if I may respectfully say so. They said he has no judicial experience.

Now, this argument is still being made. I heard the distinguished Senator from New York, last night, in an impassioned address, right over on the other side, say he has never been a judge, and we don't know what his opinions are. Never been a judge—Miguel Estrada cannot be a judge because he has never been a judge.

Well, I am awfully glad that was not the standard that was applied to Justice Felix Frankfurter when President Roosevelt nominated him. He would never have been a judge before he was a Justice of the Supreme Court.

I am glad it was not the standard that was applied to Louis Brandeis before he was nominated to the Supreme Court. I am glad it was not the standard that was applied to

Thurgood Marshall, the first African American who was ever appointed to the Supreme Court of the United States. He had never been a judge. And so should Thurgood Marshall have never been a Justice because he had never been a judge?

When I graduated from New York University Law School, the dean came to see me and said I had a chance to be a messenger down in New Orleans for a man that my dean, Bob McKay, said was one of the three or four best Federal judges in the country. His name was John Minor Wisdom, a great man and a great lawyer. He had never been a judge before President Eisenhower appointed him.

Neither had Elbert Tuttle from Atlanta or John Brown from Texas. The three of them became three of the greatest judges in the South. They presided, having been appointed by a Republican President, over the desegregation of the southern U.S. They were among the greatest judges we have ever had, and they had never been judges.

Of 108 Supreme Court Justices who have been appointed, 43 of those have never been a judge. I have a list somewhere here of judge after judge after judge. Earl Warren; Byron White; Justice Powell; Justice Rehnquist; Justice Breyer; Judge Wisdom's favorite friend on the second circuit, Henry Friendly of New York. He had never been a judge before. Charles Clark; Jerome Frank; John Paul Stevens; Warren Burger; Harold Leventhal; Spottswood Robinson; Ruth Bader Ginsberg, who had never been a judge before she was a Justice. Does that mean she wasn't qualified to sit on this Court?

Why would the other side be taking up the time of the Senate at a time when we are concerned with war with Iraq and the economy is hurting, by making that kind of argument? They would be asked to sit down in any respectable law school in America if they gave that answer. Yet they are here in the Senate trying to persuade us that it makes a point.

In 1980, I appointed George Brown of Memphis as the first African American justice in the history of the State of Tennessee. If George Brown had to be a judge before he had become a justice, I could never have appointed an African American justice, because there were no African American judges at that time. Even today, given the paucity of Hispanics and African Americans and women who are judges, if we were to say that in order for someone to be a judge, before he or she becomes a judge, we would have a terrible, invidious discrimination against men and women who should not be discriminated against, and I am sure my friends on the other side don't want to see that happen.

So even though we have spent days arguing that Miguel Estrada should not be considered because he has never been a judge, that argument has no merit to it whatsoever. We hear it less and less now that it is on the tenth day.

Well, those two arguments didn't fly because here is a superbly qualified person. So they said he didn't answer the questions.

I just had the privilege of hearing the distinguished Senator from California and the distinguished Senator from Minnesota spend a long time talking about that, saying he hasn't answered questions. Well, Mr. President, I am not a member of the Judiciary Committee, but I know they had hearings and I know Members on the other side were in charge of the Senate when they had the hearings. I know the hearings could have gone on as long as they wanted them to because they were in charge. If I am not mistaken, the distinguished Senator from Utah was here. I believe they went on all day long. The hearings were unusually long. Miguel Estrada was there and he answered their questions. Every Senator on the committee had the opportunity to ask followup questions in writing, and two did. The Senator from Massachusetts and the Senator from Illinois did that. Mr. Estrada gave those answers in writing. He has now said to Members of the Senate that he is available for further questions. He will be glad to visit with them.

What does he have to do to answer the questions? Why is there a new standard for Miguel Estrada? Why do we say to him, for the first time, tell us your views in a particular case before we will confirm you? We have tradition rooted in history that it is even unethical to do that. I appointed 50 judges, as I said, when I was Governor. When I sat down with these judges, I didn't ask: How would you rule on TV A and the rate case, or how would you rule on partial-birth abortion, in the abortion case; or what would you do about applying the first amendment to the issue of whether to take the Ten Commandments down from the courthouse in Murfreesboro, TN, or how do you feel about prayer in the schools, or if somebody says a prayer before a football game?

I didn't do that because I didn't think it was right to ask a judge to decide a case before the case came before him, which has been the tradition in this country. We are not appointing legislators to the bench, or precinct chairmen, or think-tank chairmen, or Senators; we are appointing judges. They are supposed to look at the facts and consider the law and come to a conclusion. But they say he didn't answer the questions.

Mr. President, the only way I know to deal with that—because this side says one thing and that side says the other, and since I am not on the Judiciary Committee—is to read the questions and the answers. I wanted to see whether he was asked some questions and whether he gave some answers.

These are the questions and answers, Mr. President. This is the record of the hearing of Miguel Estrada, plus a long memorandum of questions from the Senator from Massachusetts and the Senator from Illinois that he also answered. I will not take the Senate's time to read all of the questions and answers, but since they keep saying he didn't answer the questions, let me give some examples.

The chairman of the committee says: Mr. Estrada, we have heard you have held many strongly-held beliefs. You are a zealous advocate. That is great. You know, lawyers who win cases are not the ones who say ''on the one hand, this, on the other hand, that.'' They are zealous. But you also have to make sure, if you are going to enforce the laws, that your personal views don't take over the law. Senator Thurmond has asked every single nominee I have ever heard him speak to—Republican or Democrat—to speak to that effect. What would you say is the most important attribute of a judge, and do you possess that?

A very good question.

Answer: The most important quality for a judge, in my view, Senator Leahy, is to have an appropriate process for decisionmaking. That entails having an open mind, it entails listening to the parties, reading their briefs, going back behind the briefs and doing the legal work needed to ascertain who is right in his or her claims. In courts of appeals court where judges sit in panels of three, it is important to engage in deliberations and give ears to the views of colleagues who may have come to different conclusions. In sum, to be committed to judging as a process that is intended to give us the right answer and not a result. I can give you my level best solemn assurance that I firmly think I have those qualities, or else I would not have accepted the nomination.

''Does that include the temperament of the judge?'', asked the chairman.

Mr. Estrada said: Yes, that includes the temperament of a judge. To borrow somewhat from the American Bar Association, the temperament of a judge includes whether he or she is impartial and openminded, unbiased, courteous, yet firm, and whether he will give ear to people who have come into his courtroom and who don't come in with a claim about which the judge may at first be skeptical.

The chairman said: Thank you.

I submit that is a good answer. I appointed 50 judges and I would have listened to that question. I would give him an A-plus on that.

Here is the Senator from Iowa: Before I make some comment, I want to ask three basic questions.

This is in the hearing with Mr. Estrada. This is the man who the other side says doesn't answer questions.

The Senator from Iowa: In general, Supreme Court precedents are binding on all lower Federal courts, and circuit court precedents are binding on district courts within a particular circuit. Are you committed to following the precedents of the higher courts faithfully, giving them full force and effect even if you disagree with such precedents?

Mr. Estrada: Absolutely, Senator.

How could you make a better answer than that? You could either say yes or no. He said yes.

The Senator from Iowa: What would you do if you believed the Supreme Court or court of appeals had seriously erred in rendering a decision? Would you, nevertheless, apply that decision, or would you use your own judgment on the merits, or the best judgment of the merits?

Mr. Estrada: My duty as a judge, and inclination as a person and as a lawyer of integrity would be to follow the orders of the highest court.

The Senator from Ohio: And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to which sources would you turn for persuasive authority?

Mr. Estrada: When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from any place I could get it. Depending on the nature of the problem, that would include related case law and other areas higher courts had dealt with that had some insights to teach with respect to the problem at hand. It could include history of the enactment, in the case of a statute, legislative history. It could include the custom and practice under any predecessor statute or document. It could include the view of academics to the extent they purport to analyze what the law is instead of prescribing what it ought to be, and, in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

I give him an A-plus for that. That was a good question, and he gave a superb answer, just the kind of answer I think an American citizen who wants to appear before an impartial court in this country would hope to hear. I do not think we want to hear: Welcome to the court, Mr./Ms. Litigant. We have here your Democratic court; we have here your Republican court. If your views are all right, you might get the right hearing. You would want a judge who said what Mr. Estrada said.

The Senator from Massachusetts, who has been extremely critical of Mr. Estrada, asked a more detailed question. Mr. President, you may be wondering why I am going into such detail when this is available to the whole world, including the Senators on the

other side. The problem is perhaps someone has not bothered to offer this book to our friends on the other side because they keep coming down here while you and I are presiding day in and day out for 10 straight days and saying Mr. Estrada has not answered the questions. My suggestion is he has answered question after question, and he has done a beautiful job of answering the questions.

Let me take a few more minutes and give examples of answering questions.

The Senator from Massachusetts: Now, Mr. Estrada, you made the case before the court that the NAACP should not be granted standing to represent the members. As I look through the case, I have difficulty in understanding why you would believe the NAACP would not have standing in this kind of case when it has been so extraordinary in terms of fighting for those—this is the NAACP—and in this case was making the case of intervention because of their concern about the youth in terms of employment, battling drugs, and also voting.

In other words, Mr. Kennedy was saying: Mr. Estrada, how can you do this when the NAACP is on the other side?

Mr. Estrada's answer: The laws that were at issue in that case, Senator Kennedy, and in an earlier case, which is how I got involved in the issue, deal with the subject of street gangs that engage in or may engage in some criminal activity. I got involved in the issue as a result of being asked by the city of Chicago—the last time I checked, the mayor of the city of Chicago was a Democrat, a good mayor, but just so I would not want anyone to think this was a partisan comment—which had passed by similar ordinance dealing with street gangs. And I was called by somebody who worked for Mayor Daley when they needed help in the Supreme Court in a case that was pending on the loitering issue. I mention that because after doing my work in that case, I got called by the attorney for the city of Annapolis, which is the case to which you are making reference. They had a somewhat similar law to the one that had been at issue in the Supreme Court. Not the same law. They were already in litigation, as you mentioned, with the NAACP. By the time he called me—this is the lawyer for the city—he had filed a motion for summary judgment making the argument that you outlined. And he had been met with the entrance into the case by a prominent DC law firm on the other side. He went to the State and local legal center and asked: Who can I turn to to help? And they sent him to me because of the work I had done in the Chicago case. Following that, I did the brief, and the point on the standing issue that you mentioned is that in both Chicago and in the Annapolis ordinance, you were dealing with types of laws that had been passed with significant substantial support from the minority communities. I have always thought that it was part of my duty as a lawyer to make sure that when people go to their elected representatives and ask for those type of laws to be passed to make the appropriate arguments that a court might accept to uphold the judgment of the democratic people. In the context of the NAACP, that was relevant to a legal issue because one of the requirements we argued for representational standing—those who might be listening may think this is awfully detailed, awfully specific, awfully long. Mr. President, that is my point. Senator Kennedy asked an appropriate and very detailed question about an issue involving street gangs in Chicago where Mayor Daley asked Mr. Estrada to help, and Mr. Estrada gave Senator Kennedy a very detailed, courteous, respectful, specific answer that has taken me 3 or 4 minutes to read, and I am not through yet.

The point is, the other side keeps saying he has not answered questions when he has answered the questions. Not only has he answered them, he has answered them in a way a superbly qualified lawyer with his background might be expected to answer.

The Senator from Alabama: Mr. Estrada, if you are confirmed in this position, and I hope you will be, how do you see the rule of law, and will you tell us, regardless of whether you agree with it or not, you will follow binding precedent?

Mr. Estrada: I will follow binding case law in every case. I don't even know that I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with the binding case law and even in accordance with the case law that is not binding but seems instructive in the area, without any influence whatsoever from any personal view that I may have about the subject matter.

What Mr. Estrada was saying to the Senator from Alabama was: Mr. Senator, with respect, I may not decide this case the way you would like for it to be decided because I will look at the case law and I will follow the case law, and I might even decide this case the way my personal view would decide it if the case law is different than my personal view. In other words, I think Mr. Estrada is giving the answer that most Americans want of their judges, regardless of what party they are in.

I will give a couple more examples, and I do this because this has gone on now 10 days. All I hear from the other side is he will not answer the questions, he is not answering the questions, when, in fact, there is a book full of questions and answers to which I believe law professors in the law school I attended would give a very high grade.

Here is the Senator from Wisconsin: With that in mind, Mr. Estrada, I would like to know your thoughts on some of the following issues. Mr. Estrada, what do you think of the Supreme Court's effort to curtail Congress' power which began with the Lopez case back in 1995, the Gun-Free School Zone Act. That was a very controversial case. I remember my own view on that. I would have voted against it, even though, obviously, I am for gun-free school zones, but almost every Senator voted for it because they did not want to sound like they were against gun-free school zones, I guess, or whatever the reason might have been, but it was a controversial issue and a hard issue to vote against.

Mr. Estrada: Yes, I know the case, Senator. As you may know, I was in the Government at the time, and I argued a companion case to Lopez that was pending at the same time and in which I took the view that the United States was urging in the Lopez case and in my case for a very expansive view of the power of Congress to pass statutes under the commerce clause and have them to be upheld by the court. Although my case, which was the companion case to Lopez, was a win for the Government on a very narrow theory, the court did reject the broad theory I was urging on the court on behalf of the Government.

In other words, Mr. Estrada was sticking up for the very people who are saying he will not answer their questions. He was there. That was his view, and he talks about it, and he answered the question: Even though I worked very hard in that case to come up with every conceivable argument for why the power of Congress would be as vast as the mind could see, and told the court so at oral argument, I understand I lost on that issue in that case as an advocate, and I will be constrained to follow the Lopez case.

Here we are, Mr. President. Mr. Estrada took a position that I would have voted against. I think he is wrong, but he really did not take a position that I would vote against him. He argued a case before the court that made the very best argument he could make, arguing two lines of opinions. What our friends on the other side are saying is, when he writes a brief or argues a case on behalf of the United States, that somehow that reflects the point of view with which they disagree. I disagree with his brief. I would not consider voting against him or anybody else based on that kind of reason, a very complete answer.

Then if I may, I will state two more. Again, I would not normally think it was necessary for me to read the questions and read the answers, except that virtually every Senator from the other side who has come in has said he has not answered the questions, so I want the American people and my colleagues to know that if they want to know whether he has answered the questions all they need to do is go to the hearing record and read the question and read the answer.

Here is a tough one from the Senator from California: Do you believe that Roe v. Wade was correctly decided?

There is no more a difficult question for a judge who comes before the Senate, because that is a terribly difficult issue about which we all have deeply held moral beliefs, and for all of us almost there is only one right way to answer the question, unless one believes that what judges are supposed to do is to interpret the law and apply the law to the facts.

Mr. Estrada's answer: My view on that judicial function, Senator FEINSTEIN, does not allow me to answer that question.

Then he goes on to explain what he meant.

I have a personal view on the subject of abortion, as I think you know. But I have not done what I think the judicial function would require me to do in order to ascertain whether the Court got it right as an original matter. I have not listened to the parties. I have not come to an actual case or a controversy with an open mind. I have not gone back and run down everything that they have cited. And the reason I have not done any of those things is that I view our system of law as one in which both me as an advocate and possibly, if I am confirmed, as judge have the job of building on the wall that is already there and not to call it into question. I have had no particular reason to go back and look at whether it was right or wrong as a matter of law, as I would if I were a judge that was hearing the case for the first time. It is there. It is the law, as has been subsequently refined by the Casey case, and I will follow it.

That is a complete answer to the most difficult question that could be asked of a nominee for a Federal judgeship.

Senator FEINSTEIN: So you believe it is settled law?

Mr. Estrada: I believe so.

As I mentioned, if I understand the committee's rules, every Senator on the committee has the ability to ask followup questions. I know when I was confirmed by the committee they asked me many followup questions and I worked hard answering the questions 10 or 12 years ago when I was in the first President Bush's Cabinet. These are serious questions and serious answers.

Here I think is a revealing question, and one which may give us some idea of why we are in the 10th day of debate on one of the most superbly qualified candidates ever nominated for the court of appeals, a man who exemplifies the American dream. The Senator from Massachusetts, Mr. Kennedy, asked this question:

Mr. Estrada, do you consider yourself a ''conservative'' lawyer? Why or why not?

Why do you believe that you are being promoted by your supporters as a conservative judicial nominee? Do you believe that your judicial philosophy is akin to that of Justices Scalia and Thomas? Why or why not?

What Senator Kennedy is looking for is to find out is this a conservative lawyer. Is the suggestion that we may want conservative decisions or liberal decisions? I thought we wanted fair decisions, based on precedent, based on fact. I thought we wanted judges who it would be impossible for us to tell where they were coming from before they were coming.

The response from Mr. Estrada is very interesting. He said to the Senator from Massachusetts: My role as an attorney is to advocate my client's position within ethical bounds rather than promote any particular point of view, conservative or otherwise.

A-plus for that, I would say.

Mr. Estrada says: I have worked as an attorney for a variety of clients, including the United States Government, State and local governments, individuals charged with criminal activity.

Are we going to say criminal lawyers cannot be confirmed because they represented people who murdered people and that makes them murderers?

Large corporations, indigent prisoners seeking Federal habeas corpus, in those cases I have advocated a variety of positions that might be characterized as either liberal or conservative.

Remember, this is from a career employee in the U.S. Solicitor's Office in the Clinton and Bush administrations. This is Miguel Estrada: While I am grateful for the wide ranging and bipartisan support that my nomination has received, I have no knowledge of the specific reasons that might cause a particular supporter of my nomination to promote my candidacy for judicial office. As a judge I would view my job as trying to reach the correct answer to the question before me without being guided by any preconceptions or speculations as to how any other judge or justice might approach the same issue.

If all of the Senators would take the time to read Miguel Estrada's answers, some of them might end up in a textbook of appropriate answers, if they believe a judge's job is to apply precedent and consider the facts and come to a fair decision.

Miguel Estrada is qualified, and he is not just qualified, he is one of the most qualified persons ever nominated for the Federal court of appeals. If he, by his very candidacy, represents the American dream that anything is possible, coming here from Honduras at age 17 and making his way through such a distinguished series of appointments, if he has answered the questions in what I would argue is a superior way, the way most nominees would be capable of answering the questions, and I have read just a few of them—I can come back and take another 2 or 3 hours and read more because there are hours of questions and answers—and if a majority of Members of the Senate have signed a letter saying they would vote to confirm him, then why can we not vote on Miguel Estrada?

The only reason can be that our Democratic friends want to change the way judges are selected. They want to say it takes 60 votes instead of 51, and they want to say the criteria for winning those votes is to answer the questions the way they want.

That will give us a Federal judiciary filled with partisans, or an empty Federal judiciary because we will be debating night after night because we cannot agree on whom to nominate and confirm. Such a process, if carried on in subsequent Congresses, will diminish the executive. It will diminish the judiciary. It will reduce the likelihood that facts will be considered and that binding precedent will apply. In other words, it will reduce the chance that justice will be done. It will reduce respect for the courts because it will be assumed that if partisan views on the case are what it takes to get confirmed by the Senate, then partisan views are what it takes to win a case before the court.

It reminds me of the story we tell at home about the old Tennessee judge. He was in a rural county up in the mountains and the lawyers showed up for a case one morning. He said: Gentlemen, we can save a lot of time. I received a telephone call last night. I pretty well know the facts. All you need to do is give me a little memorandum on the law.

We do not want a judiciary where those who come before it believe the judges got their political instructions when they were confirmed and that there is really no need to argue the case.

So Miguel Estrada is superbly qualified. Miguel Estrada has answered question after question, and he has done it very well. A majority of the Senate has signed a letter saying they are ready to vote today to confirm Miguel Estrada, and never in our history have we denied such a vote by filibuster to a circuit court judge. It is time to vote.

Before I finish my remarks, I make this pledge. I may be here long enough, and I hope it is a while, before I have an opportunity to cast a vote for a nominee for a Federal judgeship that is sent over by a Democratic President, but I can pledge now how I will cast my vote. It will be the same way I appointed 50 judges when I was Governor. I look for good character. I look for good intelligence. I look for good temperament. I look for good understanding of the law and of the duties of judges. I will look to see if this nominee has the aspect of courtesy to those who come before the court. I will reserve the right to vote against some extremists, but I will assume that it is unnecessary and unethical for the nominee to try to say to me how he or she would decide a case that might come before him or her. When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide.

In plain English, I will not vote to deny a vote to a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

I conclude in equally plain English, and with respect, I hope my friends on the other side of the aisle would not deny a vote to Miguel Estrada just because they suspect his views on some issues may be more conservative than theirs.

These are the most serious times for our country. Our values are being closely examined in every part of the world. Our men and women are about to be asked, it appears, to fight a war in another part of the world. How we administer our system of justice is one of the most important values they are defending. We need to constrain our partisan instincts to get them under control. We need to avoid a result that changes the way we select judges. In my view, we permanently damage our process for selecting Federal judges.

The PRESIDING OFFICER (Mr. VITTER). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before Senator ALEXANDER leaves the Chamber, I am pleased that I was late so he had to speak first and I could listen to him. His remarks were thoughtful, thought provoking, and conclusive. If Senators on the other side of the aisle will listen to what he said and think it through, they will understand that this situation is going to be resolved. If they continue to insist it be resolved their way, I believe the Senate will decide that they will change procedural rules.

Having said that, I remind those who are listening and those who have lived through very recent history that there have been some contentious nominees that we have considered in recent times and that the American people can vividly remember. Let me remind those listening: We had the nomination of Judge Carswell years past. That was a highly debated nomination. All kinds of things were said about his qualifications, his capacity. There was enough enthusiasm against him—rancor—that if the filibuster had been used and brought to fruition, he probably never would have gotten enough votes to break the filibuster. He would have been defeated that way. But that did not happen. There was an up-or-down vote, and he was defeated.

Remember recently when we thoroughly debated Clarence Thomas, how many weeks that went on; how many days the debate went on. That controversial nomination was not filibustered. There was an up-or-down vote, just as we Senators on this side of the aisle are almost begging the Democrats to let happen for current nominees. It happened in the case of Clarence Thomas and he won by two votes. It is obvious, that if those who opposed him—and they opposed him with a great deal of certainty that he should not go on the bench—would have chosen the course of today, they would have used a filibuster. Why didn't they? They didn't because historically in the Senate, traditionally in the Senate, where there is majority support for a nominee, a filibuster is not used.

Having said that, it is obvious to this Senator that somehow or another in the last 4 years there has been a new idea promulgated that the advice and consent function, which the Constitution says is our prerogative to give to Presidential nominees, allows the other side, when it has an objection to a nominee, to filibuster that nominee. There have been more filibusters in the last 4 years against judges than in all of this body's previous history. It appears that every time there is a contentious nominee, that tactic will be used. That idea was not in this body before 2000. That tactic was not used before to the same degree it is used now. It is an invitation, I say to my friends on the other side of the aisle, for the majority to decide that enough is enough.

The idea that we want to protect the minority goes both ways. Senator ALEXANDER is right. Many of us have been in the Senate on this side of the aisle when we were in the minority. I came here when we only had 38 Republicans. We were the ones crying out for protection. But we didn't filibuster Federal judgeships. We didn't filibuster district

or circuit or Supreme Court nominees. That was for a number of years, not just one or two. For a number of years we were in the minority.

But the problems with requiring a super-majority is a concept that has been discussed by our Founding Fathers. Alexander Hamilton wrote:

To give the minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to that of the lesser.

Obviously, that is the case. Obviously, when we look at judges and history, the Constitution talks about advice and consent and clearly requires that a majority of the Senate consent. Our rules are not the only things that talk about advice and consent. The Constitution does. Our Founding Fathers, fully aware of this Hamiltonian quote, provided in the Constitution the events when more than a majority is required.

The Constitution said to override Presidential vetoes required more than a majority; to remove Federal officers under impeachment required more than a majority; to ratify treaties required more than a majority; to expel a House or Senate member required more than a majority; and to propose constitutional amendments required more than a majority. It did not say such was required when we are exercising our advice and consent power. Had that been a situation in our governance that required a supermajority, it would have been easy for the Founding Fathers to write that in. But they did not.

From this Senator's standpoint, the other side of the aisle, which talks so much about closing down Government if they don't get their way on this, ought to think it through carefully. Closing down the Government is something that ought to be used rarely. Even the words ought to be used carefully. ''Closing down the Government'' could mean we are going to stop funding education. It could mean we are going to close down all the national parks. It could mean we are not going to have enough money appropriated for our military. Closing down the Government, a threat from the other side of the aisle which they think would make us change our minds about this issue, is at least a two-edged sword and probably only a one-edged sword. That sword will be: Woe to those who close down Government over issues such as this.

Recall within the last 15 years, closing down Government was a threat, I regret to say, made by and carried out by some leadership in the House. The issue was thought by them to be paramount. But the public prevailed. The public said: The paramount issue is to keep your Government open, even if your cause is one you believe wholeheartedly in. From my standpoint, the threat is sufficient for me to seriously consider using this constitutional option so that advice and consent will be majoritarian instead of requiring 60 votes in the Senate.

The reason is easy for me. The Senate as an institution—its rules, its process—is marvelous. I have been here a long time. I support it. It is set apart by free debate, by opportunity to amend. But there also is precedent in our rules. There are requirements that the Senate think carefully about what they are doing regarding as important an issue as advice and consent. Some think, that Senator from New Mexico has been here too long; he has frequently said he admires and respects the rules of the Senate and has become accustomed to them. I have frequently said, for those who don't like the rules, wait until you are here 3 or 4 years—you will think they are great. Freshmen think we ought to get things done right now; forget the rules and the procedures. But let them stay here a term, and they understand what the Senate rules mean.

Understanding all that and feeling as I do about these issues, it seems to me we cannot continue to deny a man like Miguel Estrada a seat in the judiciary when there is more than a majority of the Senate who, after hours of debate, is willing to have a vote. The other side knows that such a vote has a majority of support so they prevent a vote from occurring. You can't keep doing that and expect the majority to sit by and say: It is just the current rules, you can't change them; don't worry about it. In fact, that is a dangerous proposition.

The bell will toll. If this is continued, there will be Members such as this Senator who will end up saying: We have had enough. We are willing to abide by the same rules when we are in the minority. It will apply to both Democrats and Republicans. We know some say we will be in the minority one day. Some of us are willing to say: Let it be the case for both, and let us rule by majority vote with reference to judicial appointees.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I rise to offer an historical perspective on the very important issue of the Senate exercising its advice and consent responsibilities on judicial nominations. It has been the subject of considerable discussion, and I wanted to offer some thoughts on the subject myself. I have been around here long enough, in both the majority and the minority, to understand that a Senator may from time to time use a vote on a judicial nomination to protest the nomination or a particular course of action. But what we saw in the 108th Congress was a wholesale departure from the norms and the traditions of the Senate, whereby the use of the judicial filibuster became a commonplace device to stop the President's circuit court nominees.

For the first time in history, a minority of Senators, on a repeated, partisan, and systematic basis, has prevented the Senate as a whole from discharging its constitutional obligation to provide advice and consent on judicial nominations.

This level of obstructionism is truly unprecedented. As justification, those who support this approach have pointed to several nominees of President Clinton on whom it was necessary to file cloture. I was here during that period. I remember exactly what happened.

The fact is it was the Republican leadership in the majority who filed cloture on these very controversial Clinton nominees. This does not show that the Republican Conference was trying to prevent their consideration. Rather, Republicans, who were Members of the opposition party of the President, filed cloture to advance their consideration—to advance their consideration.

If there is any doubt, one need only look at the cloture votes on two of the most controversial Clinton nominees, Marsha Berzon and Richard Paez, and then compare those cloture votes with the votes on the nominations themselves. Doing so reveals two important points.

First, the cloture vote on these nominees was overwhelmingly in favor of ending debate—of ending debate—and proceeding to their confirmation. The cloture vote on the Berzon nomination was 86 to 13. So obviously there were 13 Senators trying to prevent Ms. Berzon from becoming a Federal judge. The cloture vote on the Paez nomination was 85 to 14. Indeed, the vast majority of the Republican Conference—in fact, a supermajority of about 70 percent of our conference—voted for cloture. These plain facts dispute the notion that the Republican Conference was filibustering the Berzon and Paez nominations.

In short, if I could be a bit poetic, a cloture vote does not a filibuster make. A cloture vote does not a filibuster make.

A second point is even more telling. Many of the very same members of our conference who voted for cloture on these nominations then turned around and voted against confirmation because we had serious concerns about the Paez and Berzon nominations. Senator LOTT, who was majority leader at the time, did that, and so did I, voted for cloture, believing that judges should not be filibustered for the purpose of ending their nomination—and then voted against the judge on the up-or-down vote to which all judges are entitled. The confirmation vote on the Berzon nomination was 64 to 34. The

confirmation vote on the Paez nomination was 59 to 39. Obviously, the opponents of Paez could have killed that nominee by a filibuster if they had chosen to do so. Both times we approached the filibuster level of 41 votes. I know how to count votes, and if we had wanted to filibuster the Paez and Berzon nominations, I suspect we could have and probably stopped them both. But the Republican leadership did not whip our caucus to filibuster these two nominations. In fact, it did the opposite. To his great credit, Senator LOTT urged our colleagues not to filibuster these two nominations despite the strong opposition to them within our conference.

That is why Judge Paez and Judge Berzon have been sitting on the ninth circuit for the last 5 years. In fact, today is the fifth anniversary of their confirmation. They were confirmed on March 9, 2000. And for those who point to the Paez and Berzon nominations to try to justify their filibusters, I emphasize again we are talking about Judge Paez and Judge Berzon. So given that many of my Republican colleagues and I opposed both the Berzon and Paez nominations as shown by our votes against the nominations themselves, why did we vote for cloture? We did so because we were mindful of a longstanding Senate norm and precedent that the Senate does not filibuster judicial nominations. That is an unwritten Senate rule. Even if one strongly disagrees with the nomination, the proper course of action under Senate norms and traditions, as they have consistently been understood and applied, is not to filibuster the nominee but to vote against him or her. That is precisely what a supermajority of my conference and I did on the Paez and Berzon nominations, who were two of the most controversial—these were extraordinarily controversial judges that President Clinton had named to the ninth circuit. My Republican colleagues and I honored Senate tradition. We followed the constitutional directive set forth in article II, section 12, that the Senate as an institution as reflected by the will of the majority of its Members, render its advice and consent on the President's nominees. We put propriety over partisanship.

But that precedent has now been changed. Those norms and traditions have been upset.

Therefore, I ask my colleagues to consider the ramifications of continuing down this path of institutionalizing this use of the judicial filibuster as a tool of obstruction. For more than 200 years we have recognized the careful balance our Founding Fathers struck among our three branches of Government. Judicial filibusters pose a danger to this constitutionally required separation of powers.

I believe it is not too late to turn back. It is in the best interests of both great parties and the Senate itself that we restore the norms, traditions, and precedents of the past 200 years that have served this country so well. It is extraordinarily shortsighted. Our friends on the other side of the aisle will have the White House again one day, and the shoe will be on the other foot. They will rue the day, if this precedent is allowed to prevail, that they set this precedent. I think it is time we stood back, took a breath and thought about this institution and respected its norms and traditions.

Mr. President, I yield the floor.

EXPRESSING THE SENSE OF THE SENATE ON TERRORIST ATTACKS AGAINST THE PEOPLE OF SPAIN

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 76, submitted earlier today by Senators LIEBERMAN, ALLEN, and DODD.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 76) expressing the sense of the Senate on the anniversary of the terrorist attacks launched against the people of Spain on March 11, 2004.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, and that any statements related to the resolution be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 76) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 76

Whereas on March 11, 2004, terrorists associated with the al Qaeda network detonated a total of 10 bombs at 6 train stations in and around Madrid, Spain, during morning rush hour, killing 191 people and injuring 2,000 others;

Whereas like the terrorist attack on the United States on September 11, 2001, the March 11, 2004, attacks in Madrid were an attack on freedom and democracy by an international network of terrorists;

Whereas the Senate immediately condemned the attacks in Madrid, joining with the President in expressing its deepest condolences to the people of Spain and pledging to remain shoulder to shoulder with them in the fight against terrorism;

Whereas the United States Government has continued to work closely with the Spanish Government to pursue and bring to justice those who were responsible for the March 11, 2004, attacks in Madrid;

Whereas the European Union, in honor of the victims of terrorism in Spain and around the world, has designated March 11 an annual European Day of Civic and Democratic Dialogue;

Whereas the people of Spain continue to suffer from attacks by other terrorist organizations, including the Basque Fatherland and Liberty Organization (ETA);

Whereas the Club of Madrid, an independent organization of democratic former heads of state and government dedicated to strengthening democracy around the world, is convening an International Summit on Democracy, Terrorism, and Security to commemorate the anniversary of the March 11, 2004, attacks in Madrid; and

Whereas the purpose of the International Summit on Democracy, Terrorism, and Security is to build a common agenda on how the community of democratic nations can most effectively confront terrorism, in memory of victims of terrorism around the world: Now, therefore, be it

Resolved, That the Senate—

(1) expresses solidarity with the people of Spain as they commemorate the victims of the despicable acts of terrorism that took place in Madrid on March 11, 2004;

(2) condemns the March 11, 2004, attacks in Madrid and all other terrorist acts against innocent civilians;

(3) welcomes the decision of the European Union to mark the anniversary of the worst terrorist attack on European soil with a Day of Civic and Democratic Dialogue;

(4) calls upon the United States and all nations to continue to work together to identify and prosecute the perpetrators of the March 11, 2004, attacks in Madrid;

(5) welcomes the initiative of the Club of Madrid in bringing together leaders and experts from around the world to develop an agenda for fighting terrorism and strengthening democracy; and

(6) looks forward to receiving and considering the recommendations of the International Summit on Democracy, Terrorism, and Security for strengthening international cooperation against terrorism in all of its forms through democratic means.

SUPPORTING THE PEOPLE OF LEBANON

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 77 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 77) condemning all acts of terrorism in Lebanon and calling for removal of Syrian troops from Lebanon and supporting the people of Lebanon in their quest for a truly democratic form of government.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 77) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 77

Whereas since December 29, 1979, Syria has been designated a state sponsor of terrorism by the Secretary of State;

Whereas on December 12, 2003, the President signed the Syria Accountability and Lebanese Sovereignty Restoration Act of

2003 (22 U.S.C. 2151 note), which declared the sense of Congress that the Government of Syria should halt its support for terrorism and withdraw its armed forces from Lebanon, endorsed efforts to secure meaningful change in Syria, and authorized the use of sanctions against Syria if the President determines that the Government of Syria has not met the performance criteria included in that Act;

Whereas the President has imposed the sanctions mandated by that Act, which prohibit the export to Syria of items on the United States Munitions List and the Commerce Control List, and has already imposed 2 of the 6 types of sanctions authorized by that Act, by prohibiting the export to Syria of products of the United States (other than food or medicine) and prohibiting aircraft of any air carrier owned or controlled by Syria to take off from or land in the United States;

Whereas the United Nations Secretary General, Kofi Annan, recently stated that Syria continues to maintain more than 14,000 troops in Lebanon;

Whereas United Nations Security Council Resolution 1559 (September 2, 2004) calls for the withdrawal of all foreign forces from Lebanon and for the disbanding and disarmament of all armed groups in Lebanon;

Whereas on February 14, 2005, the former Prime Minister of Lebanon, Rafik Hariri, and 18 others were assassinated in an act of terrorism in Beirut, Lebanon;

Whereas the Secretary of State recalled the United States Ambassador to Syria, Margaret Scobey, following the assassination of Rafik Hariri; and

Whereas, on February 28, 2005, the Prime Minister of Lebanon, Omar Karami, resigned, dissolving Lebanon's pro-Syrian Government: Now, therefore, be it

Resolved, That the Senate—

(1) condemns all acts of terrorism against innocent people in Lebanon and around the world;

(2) condemns the continued presence of Syrian troops in Lebanon and calls for their immediate removal;

(3) urges the President to consider imposing additional sanctions on Syria under the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (22 U.S.C. 2151 note); and

(4) supports the people of Lebanon in their quest for a truly democratic form of government.

Mr. MCCONNELL. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. I thank the Chair.

(The remarks of Mr. NELSON of Florida pertaining to the introduction of S. 57 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. NELSON of Florida. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, we are in morning business on the Democratic side, as I understand it, for the next 11 minutes; is that correct?

The PRESIDING OFFICER. That is correct; 10½ minutes.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, the President of the United States is on the road today. He is taking his case for privatization of Social Security around the United States. It is an interesting debate. It is a good debate because it gets down to the heart of the question.

I joined with some Democratic Senate leadership—HARRY REID, BYRON DORGAN, and several other colleagues—and we went on the road last week to New York, Philadelphia, Phoenix, and Las Vegas to talk about this issue. We are engaging the American people because we believe it is an important debate.

I think we should start the debate by agreeing on some very basic points, and the first point on which we should agree is that at the end of the debate, Social Security will still be there, it will survive, and we are all committed to it. Any proposal that comes from anyone of either political party that weakens Social Security and lessens the likelihood that it will be there as a safety net for America should be summarily rejected. That is why we on the Democratic side have said we want to sit down with President Bush and the Republican leadership to make Social Security strong, but first we have to take privatization of Social Security off the table because privatization of Social Security, as the President is proposing, will weaken Social Security, it will not strengthen it. It takes trillions of dollars out of the Social Security trust fund, a trust fund that has already been raided by politicians for years. It would be devastated by taking out this much money.

The President is calling for taking the money out of the Social Security trust fund that is going to be used to pay off retirees in the years to come.

How do they make up for this? The President's White House proposes cutting the benefits for retirees as much as 50 percent. So if someone is receiving $1,200 today, had the President's plan been in effect from the beginning of Social Security, they would be receiving around $500. It is a dramatic cut the President is talking about. It would push many senior citizens into poverty, not to mention add dramatically to our national debt, a debt which is already too large, will be increased this year by our deficit spending, and a debt which is financed by foreign countries. China, Japan, Korea, and Taiwan hold America's mortgage.

President Bush's privatization plan means that mortgages will grow substantially, from about $8 trillion to at least $15 trillion by the President's calculations. That means our children, who are supposed to be benefited by this so-called privatization, will not only have to gamble their retirement in the stock market, but also face the payment of this debt. That is fundamentally unfair.

Many people have said: Why don't the Democrats come forward with a plan on Social Security? I will tell my colleagues the Democratic plan in three words: Social Security first. If any plan to strengthen Social Security does not guarantee that this safety net and the benefits people can count on for retirement will be there in the years to come, it is not a plan we should even consider. Privatization cannot meet that guarantee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, how much time is remaining on the Democratic side?

The PRESIDING OFFICER. There is 6 minutes 50 seconds remaining.

Mrs. MURRAY. Mr. President, I concur with the remarks of the Senator from Illinois about Social Security. We have heard a lot of talk on this floor. We have heard a lot of talk on the television shows and all around the country in recent weeks about Social Security. We have heard about a supposed crisis in this program, that it will be flat busted or broke, we have heard about the President's view that this social insurance program must be radically restructured, and we have heard that privatizing Social Security is the only way to go.

Now we hear that the President is embarking on a 60-stop campaign tour in an effort to sell his privatization plan to the American people. The American people are not buying this risky privatization scheme.

From the day this debate began, I have consistently said that any proposal put forward to address Social Security must meet a few basic standards. It has to preserve Social Security's guaranteed benefit. It has to preserve Social Security's protections for workers when they are disabled. It has to protect against benefit reductions, especially for women, minorities, and others, and it has to protect our budget from ever-growing deficits.

This week in the Senate we saw the first bill that purports to reform Social Security, and, unfortunately, that new legislative proposal fails my simple test in a few not-so-simple ways. First, preservation of the guaranteed benefit has to be our top priority. The bedrock of Social Security is the guaranteed benefit, and the President's plan calls for cutting benefits by one-third or more. That is a huge hit to every retiree who depends on this system. Like Bush's plan, the new Senate bill will also slash benefits. That plan has a further 7 percent reduction in benefits for early retirees relative to current law that is phased in between 2024 and 2028.

In conjunction with the two pieces of the plan that raise the retirement age, the proposal would reduce benefits for retirees—people who are retiring at 62—by 40 percent by the year 2026, by 50 percent by the year 2054, and it will reduce them by 56 percent by the year

2080. The deconstruction of the guaranteed benefit leads us further away from the real security this program provides, and this country needs to know that even though Republicans do not like to campaign on it, their plans would end the guaranteed benefit Social Security provides today.

A few weeks ago, I joined several of my female colleagues on the Senate floor to speak about how the President's plan would impact women. Unfortunately, this is not a new battle. For years, we have fought to ensure that women and minorities receive a fair shake in Social Security reform discussions. The promise of Social Security is especially important to women. Why? Because women face unique challenges when they retire. We know women make less money throughout their lifetimes, so we know when they retire they have fewer dollars to live on. Women also leave the workforce to raise their families. That is a value that we all support and endorse and want women to be able to do, but that means they have less money when they retire. Finally, women live longer. That is a fact. And they are more likely to suffer from a chronic health condition. So they, in particular, rely on the security of Social Security. With those special challenges women face, we know today Social Security keeps a lot of older women out of poverty. The benefit formulas of Social Security are tilted to give a greater rate of return for lower wage workers such as women and minorities.

Unfortunately, time and time again, we have found that these proposals will impoverish women and slash their benefits. The new plan that has been offered in the Senate is no exception. That plan will cut benefits based on a new life-expectancy requirement. The Senate Republican plan says:

> By factoring increased life expectancy into the base benefit calculation, the rate of increase in benefit payments will be slowed.

Addressing the long-term solvency of Social Security is a laudable goal, but trying to balance the books by slashing benefits for women is absolutely unacceptable. This plan would dismantle the progressive nature of Social Security benefits, leaving women with less money over a longer period of time. So if one is a woman who retires at 62 or 65 and lives to be 95, under these plans they will not be able to make it. Their Social Security benefits will be reduced, and they will not be able to live off what they retired on 30 years prior to that.

It makes no sense to reduce women's benefits. They are already limited by their lower income, and cutting them again simply because they live longer is just wrong. In fact, we should be doing all we can to ensure progressive benefits for low wage earners that are targeted to those least likely to have other retirement savings. All too often, as we know, that means women.

I know I am not going to stand for this attack on women, and I know many of my colleagues are going to stand right alongside me in this fight.

Finally, there is another important issue I will talk about today that no one on the other side of the aisle or the other side of Pennsylvania Avenue cares to talk about, and that is these Social Security plans will add trillions of dollars to an already massive Federal debt, a debt that we are just handing over to the generation coming behind us.

In traveling the country to sell his privatization plan, President Bush has been saying we have an obligation and a duty to confront problems and not pass them on to future generations. Well, many of us on both sides of the aisle agree with him. We should not create new problems for the next generation to handle. The trouble is, the President's plan actually adds to the problems of the next generation. It does nothing to solve them.

This new Republican plan, just like President Bush's, would add trillions of dollars in debt to our country's financial sheets in the next two decades alone. In fact, the Center on Budget and Policy Priorities said that the privatization proposal will create nearly $5 trillion in new debt over the next 20 years. That money is going to have to come from somewhere, and it is naive to think that huge new borrowing will not affect current retirees. It is also naive to think that massive new borrowing will not affect programs such as Medicare and Medicaid that really do need our attention. It is naive to think we will simply go along and pass on these massive new problems to our children and our grandchildren.

So once again we are left to consider privatization plans that run up massive new debt on the country's credit card while pulling money away from the Social Security system and ending the bedrock of the program—the guaranteed benefit. That is a recipe for disaster.

The President and his friends in the Senate are fixated on private accounts, even though they will do absolutely nothing to address the long-term solvency of the Social Security program.

Last week, I joined with 41 of my colleagues to ask President Bush to take this risky scheme off the table before moving forward with any Social Security reform. The letter said, in part, funding privatized accounts with Social Security dollars would not only make the program's long-term problems worse, but many believe it represents a first step towards undermining the program's fundamental goals. Therefore, so long as this proposal is on the table, we believe it will be impossible to establish the kind of cooperative bipartisan process we need to truly address the challenges facing the program many decades in the future.

We will not stand for the President's plan for social insecurity. We will continue to stand for future generations against a private solution that simply adds trillions of dollars in debt to future generations. We want to be proud of what we pass along to our children and grandchildren.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I do not know if it is appropriate at this time to ask that we return to S. 256, the pending business of the Senate.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by an vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

Kennedy (for Leahy/Sarbanes) amendment No. 83, to modify the definition of disinterested person in the Bankruptcy Code.

Harkin amendment No. 66, to increase the accrual period for the employee wage priority in bankruptcy.

Dodd amendment No. 67, to modify the bill to protect families.

Dodd (for Kennedy) amendment No. 68, to provide a maximum amount for a homestead exemption under State law.

Dodd (for Kennedy) amendment No. 69, to amend the definition of current monthly income.

Dodd (for Kennedy) amendment No. 70, to exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing.

Dodd (for Kennedy) amendment No. 72, to ensure that families below median income are not subjected to means test requirements.

Dodd (for Kennedy) amendment No. 71, to strike the provision relating to the presumption of luxury goods.

Dodd (for Kennedy) amendment No. 119, to amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy.

Akaka amendment No. 105, to limit claims in bankruptcy by certain unsecured creditors.

Feingold amendment No. 87, to amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts.

Feingold amendment No. 88, to amend the plan filing and confirmation deadlines.

Feingold amendment No. 90, to amend the provision relating to fair notice given to creditors.

Feingold amendment No. 91, to amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions.

Feingold amendment No. 92, to amend the credit counseling provision.

Feingold amendment No. 93, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 94, to clarify the application of the term disposable income.

Feingold amendment No. 95, to amend the provisions relating to the discharge of taxes under chapter 13.

Feingold amendment No. 96, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 97, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 98, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 99, to provide no bankruptcy protection for insolvent political committees.

Feingold amendment No. 100, to provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable.

Feingold amendment No. 101, to amend the definition of small business debtor.

Talent amendment No. 121, to deter corporate fraud and prevent the abuse of State self-settled trust law.

Schumer amendment No. 129 (to amendment No. 121), to limit the exemption for asset protection trusts.

Durbin amendment No. 110, to clarify that the means test does not apply to debtors below median income.

Durbin amendment No. 112, to protect disabled veterans from means testing in bankruptcy under certain circumstances.

Boxer amendment No. 62, to provide for the potential disallowance of certain claims.

The PRESIDING OFFICER. Under the previous order there will be 10 minutes of debate equally divided on each of the following amendments: amendment No. 110, Amendment No. 66, amendment No. 62, and amendment No. 67.

Mr. DURBIN. Mr. President, if you will please notify me when I have 1 minute remaining of my 5 minutes allocated, I would appreciate it.

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. DURBIN. The argument behind this bankruptcy reform bill is it is not going to affect people in lower income categories. Senators on the other side of the aisle have come to the floor and said: Don't worry about this bill. Yes, it is stricter, you have to file more documents, it will cost more in legal fees, but if your income is lower than the median income and you file for bankruptcy, it does not affect you. You are exempt from it.

Senator after Senator has come to the floor and said that. I even asked Senator SESSIONS of Alabama on the floor yesterday: Is that your understanding, that if you are below median income you do not have to file all the papers for the means test? You don't have to go through some of the most harsh provisions of the bankruptcy bill? And he said yes, that was his understanding.

My amendment is very simple. It clarifies what has been said over and over again, that the means test does not apply to debtors who go into bankruptcy court whose incomes fall below the median level. It adds only two sentences to the bill. It makes it clear that those lower income debtors only have to show the court, first, the documentation already required under chapter 7, and then their monthly income. Once they show the monthly income, if it is below the median income in that area, they are exempt from the means test. That is all my amendment says.

Frankly, if colleagues on the other side of the aisle will not accept this amendment, I have to wonder whether they really believe this bill exempts lower income people. If it does not, it means everybody walking into bankruptcy court, not just those who can repay but many who have much lower salaries and incomes and cannot, is going to have to go through all of the procedural hooks and ladders set up by this S. 256. I don't think that is reasonable. It certainly is not the way this bill has been explained for the last 2 weeks. It is important that we read and recount what Senator HATCH said on February 28:

> Let me tell you at the outset, the poor are not affected by the means test. The legislation provides a safe harbor for those who fall below median income.

The Republican leader came to the floor, and here is what he said:

> This bankruptcy reform act exempts anyone who earns less than the median income in their State.

Those are the words of Senator FRIST.

Senator SESSIONS:

> I remind all of my colleagues that people who are economically distressed and have incomes below the median income already will be exempt from the means test.

If this is true, and I hope it is, there is no reason this amendment should not pass overwhelmingly, in fact by a voice vote. But if those who drew up this bill really want to put everybody through these means tests regardless of their income, even those in the lowest income categories, that is another story altogether.

We know that half the people who go to bankruptcy court today are there because of medical bills. They are people who ended up with a mountain of debt because of an illness in their family. Do you know what else? Three-fourths of those people filing for bankruptcy because of medical bills had health insurance. They thought they had protected themselves and their families. They didn't have enough health insurance or they lost their job after the diagnosis. It happens.

What we are saying is if you are in one of those terrible situations where things have gone terribly wrong for your family and you are facing bankruptcy and you are in a low-income category, for goodness' sakes, why would we heap more procedural requirements, more cost, more paperwork, more demands on the poorest among us?

This amendment says what three Republican Senators have said on the floor word for word: If you are below the median income, you do not have to fill out the papers for the means test. I hope my colleagues, those who came to the floor and said this over and over again, agree to this amendment.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. DURBIN. Thank you for notifying me of that.

We are going to have several amendments this morning. Each one of these amendments tries to clarify this bill. This bill is being driven by the credit card and banking industry, you know, the same people who fill your mailbox with credit card applications you never asked for, the same people who show up at the Big Ten football game trying to peddle their credit cards to students—the same people are pushing this bill. They want folks to get deep in debt and if they file for bankruptcy never get out from under the debt—keep paying it for a lifetime: a literal debtors' prison.

If we truly want to exempt the lowest income Americans from the worst provisions and toughest provisions of this bill, I encourage all of my colleagues to support amendment No. 110.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa is recognized.

AMENDMENT NO. 66

Mr. HARKIN. Mr. President, I call up amendment No. 66 on behalf of myself, Senators ROCKEFELLER, LEAHY, DAYTON, and KENNEDY.

The PRESIDING OFFICER. The amendment is pending.

Mr. HARKIN. The amendment is pending?

The PRESIDING OFFICER. Correct.

Mr. HARKIN. I understand under the rule I have 5 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Mr. President, this is a straightforward amendment that protects the ability of workers to receive their pay, including vacation and sick pay and severance pay, when their company goes bankrupt. Under bankruptcy law, wages owed have long been

given an extremely high priority, as they should be. This bill raises the cap on how much pay can be received as a high priority to $10,000. Unfortunately, however, the bill puts a time limit on this of 180 days. In other words, under the bill a worker gets this preference, gets first-in-line priority preference for getting backpay and wages but only for the last 180 days prior to the company filing for bankruptcy. My amendment simply strikes the 180-day limitation. It doesn't touch the $10,000 limit.

Why is this important? Many courts have ruled that severance pay is earned during the entire time a worker works for a company. If a worker, let's say, has worked for a company for 10 years and under the contractual agreement gets $500 per year severance pay for every year one worker worked for the company, if this worker has worked for the company for 10 years, this worker is due $5,000 in severance pay. The company goes bankrupt. He gets first in line, he gets his priority, but he can only get it for the last 180 days. So, instead of $5,000, he or she only gets $250. That is grossly unfair.

We faced a similar problem with vacation pay. Again, vacation pay has been held to accrue over a certain time period, usually 1 year. So a 1-year time period is when you accrue vacation pay. Let's say, though, that your company goes bankrupt. Let's say you have earned vacation pay for the whole year. Now you only get 180 days' credit, so you are getting about half of what you normally would get.

Last, we have the issue of when does the 180-day clock start ticking. A lot of times, a company will file for bankruptcy long after it has closed a division here or a division there or closed an operation someplace and they have laid off people. This happens a lot.

Let's say you have worked for a division in Louisiana, and the company, a national company, closed operations in that plant and they just laid you off. They have not gone bankrupt yet; they laid you off. Then 181 days later or 190 days or 200 days later the company files for bankruptcy, OK? Now that worker who worked in that division wants to get priority for back wages. I am sorry, you are out of luck. Why? Because you only get 180 days going back. You may have been laid off, but the company did not go bankrupt, so now you only get to go back 180 days, and they lose their priority. This, again, is grossly unfair.

Are there other examples where there is no time period for the collection or for getting into priority preference? I would just mention two. There is a priority for creditors of grain storage facilities. Let's say a farmer has grain in a storage facility. We are familiar with that in Iowa. This has happened many times in the past. Let's say the storage facility goes bankrupt. The farmer gets first-in-line priority to get his pay for the grain stored in that facility. There is no time limit. It could be 2 years, 3 years; there is no time limit whatsoever. But under this bill, for workers, there is a 180-day time limit.

For the child support and alimony priority—we have heard a lot of discussion about that—there is no cap and there is no time limit. For farmers on grain elevators there is a cap, but there is no time limit. For child support and alimony there is neither a cap nor a back-time limit.

This amendment is very simple. It just says, if you are a worker, if your company goes bankrupt—we leave the $10,000 cap. That is fair. That has been raised from $5,000 to $10,000. It was $5,000 under the old bill. But it does away with the 180-day time limit. It just takes off that time limit and lets workers get in the priority queue to get severance pay, vacation pay, sick pay—their back wages—when and if the company goes bankrupt.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. Mr. President, if there is no one here seeking to speak on the bill, I ask unanimous consent I be allowed to proceed as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRATULATING GOVERNOR SCHWARZENEGGER

Mr. HARKIN. Mr. President, I rise to congratulate the Governor of California, Governor Schwarzenegger, who just the other day, the day before yesterday, announced his support for a California initiative to get junk food out of our schools. I refer here to a newsclip that came out on Monday. I will read from it.

Governor Arnold Schwarzenegger, a longtime advocate of healthier food in schools, said Sunday that all ''junk food'' in vending machines on California campuses should be replaced with nutritious snacks such as fresh vegetables. ''I think we should use our vending machines in the schools—fill them with good food, with fresh vegetables, with milk and products that are really healthy for the body,'' said Schwarzenegger, speaking at the annual fitness exhibition here that bears his name.''

I say: Bravo Governor Schwarzenegger. Thank you. Thank you for taking the lead on this issue. I hope other Governors will follow suit and follow his leadership.

I have been concerned about our kids' eating habits for many years now. In the 1996 farm bill, I tried to get vending machines taken out of schools. That didn't quite happen, of course. But we are still making the effort to try to get fresh fruits and vegetables to kids in school for healthier eating. More and more, we see schools making agreements with soft drink companies for exclusive contracts. You walk down the hallways in schools: Coke, Pepsi, this and that, all over the place. Kids are bombarded with this. The fact is, these kids in school are creating for themselves bad habits which, when they go into adulthood, lead to chronic diseases. So we have to start with our kids and start in the schools where vending machines and other sources of junk food have a profoundly negative impact on students' nutrition.

A recent study took a group of students who ate only USDA-approved school lunches up through the fourth grade. Then they tracked them into the fifth grade, where they gained access to school vending machines, snack bars, and other food sources. Up to the fourth grade they had only USDA-approved school lunches. In the fifth grade they got to go to vending machines and stuff like that. Guess what the study found. As fifth graders, they consumed 33 percent less fruit, 42 percent fewer vegetables, 35 percent less milk than they did as fourth graders. In addition, they ate 68 percent more deep-fried vegetables—French fries—and drank 62 percent more soft drinks and other sugary beverages. In 1 year, from fourth to fifth grade.

Our Nation spends a whopping $1.8 trillion on health care, and 75 percent of that goes to treat chronic diseases. A large share of that is preventable. If we are going to turn this situation around, if we are going to move from a current sick care system to a genuine health care system and emphasize prevention and wellness, then our schools are on the front line, and that is why what Governor Schwarzenegger did is so vitally important. Kids today face a minefield of nutritional risks from the time they get up in the morning to the time they go to sleep at night, opportunity after opportunity to eat unhealthy foods.

Guess what. They are bombarded with ads all day long. Whether it is on television, signs in their schools, they are bombarded with ads to eat junk food, drink sugary beverages.

When was the last time you saw an ad for an apple? When was the last time you saw an ad to eat fresh vegetables? No. You see ads to eat all kinds of junk food every single day. That is what our kids see.

Ninety-three percent of our teenagers exceed Government guidelines for consumption of saturated fat. One-quarter of our kids show 5 to 10 early warning signs of heart disease.

This is from the CDC. I am not making this up.

One-third of today's children will go on to develop diabetes.

This is from the Centers for Disease Control and Prevention.

Fifteen percent of America's children and teenagers are overweight. That is 3 times what it was 35 years ago. It is higher than any other industrialized country in the world.

We are placing our kids at risk in schools. They are inundated by candy, soft drinks, snacks high in sugar, salt, and fat. And to make matters even worse, physical education is being squeezed out of schools.

I saw a recent figure that on average in the United States, grade school kids get less than 1 hour of physical activity in school. We are squeezing physical activities out of school. If they are on the football team or the basketball team, or some other varsity, they are all right. But if they are not up to that

standard, what physical activity is there for a kid in school today?

Lastly, I have worked on a bipartisan basis with members on the Senate Agriculture Committee and the Appropriations Committee to increase physical activities in school and get funding for fresh fruits and vegetables. We started this in the farm bill. It has been a great success, giving free fresh fruits and vegetables to kids. We found that when you give free fresh fruits and vegetables to kids in school, they eat them, it solves the hunger pain, and they study better. Guess what. They are not putting their money in the vending machines to buy junk food.

We have had 3 years of experience. We took four States and 100 schools to test this theory, and every single one of those schools has been a resounding success. Now we are up to 9 States and over 200 schools. It is growing.

I again commend Governor Schwarzenegger and hope we can get California to move ahead on that also. The Governor said they were introducing legislation to ban all junk foods in schools. I say, Congratulations, Governor Schwarzenegger. Evidently, this is being written or introduced in California to rid schools of vending machines of sodas, bad foods, and stuff such as that. I again want to congratulate the Governor of California.

He also spoke on Sunday about the ''broader need for parents to pay attention to what children eat''—saying ''they shouldn't feed them 1,000-calorie cheeseburgers just to avoid an argument.''

Good for you, Governor.

He said:

I know it's easy to go in that direction. I know when I come home I don't want to fight at home with my kids about what they should eat. Because there are already fights about their homework and about reading and math.

You've got to make an effort. What you give a child or what you put in your body is exactly what we become. So the more garbage you put in there, the more you're going to look like a garbage disposal.

Again, I want to take the time to commend the Governor for his leadership on this issue. He is a great example of physical fitness. He is also a great example of endurance and of leadership. I hope the Governor of California will not confine himself on this issue only to California. I hope he will take his message nationwide. I hope the other States and other Governors will follow his lead on what he has done in California.

I ask unanimous consent that the articles I read from—one that appeared in the Associated Press and also the Los Angeles Times—be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Associated Press, March 7, 2005]

CALIFORNIA GOV. ARNOLD SCHWARZENEGGER SAYS HE WANTS TO BAN JUNK FOOD AT SCHOOLS

(By Erica Werner)

COLUMBUS, OH.—California Gov. Arnold Schwarzenegger wants to pump up his state's students with vegetables, fresh fruits and milk.

''First of all, we in California this year are introducing legislation that would ban all the sale of junk food in the schools,'' Schwarzenegger said during a question-and-answer session with fans on the final day of the Arnold Classic, the annual bodybuilding contest that bears his name. He said junk food would be pulled from school vending machines in favor of healthier foods, including fruits and vegetables.

After the session Sunday, the governor's aides said Schwarzenegger supports a bill by Democratic state Sen. Martha Escutia that would ban soft drinks at public schools.

The administration also hopes to develop a more comprehensive legislative package dealing with snack foods later in the year, said Chief of Staff Pat Clarey, although she added it might not eliminate all junk food from schools.

Topics at the question-and-answer session ranged from fitness to whether Schwarzenegger wants to be president. Several hundred fans at the Columbus Veterans Memorial auditorium were invited to ask the former world bodybuilding champion whatever they wanted.

With fellow former Mr. Olympia Franco Columbo at his side, Schwarzenegger spent about 50 minutes answering questions.

Many people asked detailed queries about workout routines. Schwarzenegger talked knowledgeably on how best to improve the deltoid muscles—numerous repetitions, tailored to the three separate deltoid muscle groups, front, middle, and back.

Schwarzenegger said he still does 30 to 45 minutes of cardio each day and lifts weights about four days a week. He said he misses doing heavy lifting, but doctors banned it after his heart surgery in 1997.

At one point, Schwarzenegger delivered what amounted to a motivational lecture after a questioner betrayed some discouragement about his own fitness potential. Schwarzenegger told him to visualize his goal, never lose sight of the vision and work toward it.

''As you know, I'm a big believer in the mind,'' Schwarzenegger said. ''Just be positive, and kick some butt.''

At the men's bodybuilding finals the night before, Schwarzenegger had called on bodybuilding to get rid of steroids, which are reportedly rampant in the sport. He got one question on the topic Sunday, from a sixth-grader.

The girl asked the governor to explain why he's said publicly he doesn't regret his own past steroid use. Schwarzenegger reiterated that at the time he took the drugs they were new to the market and weren't illegal.

People shouldn't take steroids now—''A, they are harmful for the body, and B, they are illegal,'' he said.

Schwarzenegger was asked whether he would consider running for president if the Constitution were amended to allow foreign-born citizens to serve in the office. As in the past, he said he's focused on governing California.

''I'm not saying no I'm not interested in it, but I'm not concentrating on it,'' he said.

Mr. HARKIN. Mr. President, I commend the Governor of California. I say to him that whatever we can do here on a bipartisan basis to back you up, you have our support and our encouragement. Please take your message nationwide. Don't just keep it in California.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 62

Mrs. BOXER. Mr. President, I call up my Amendment No. 62.

The PRESIDING OFFICER. The amendment is pending.

Mrs. BOXER. Mr. President, is the rule 10 minutes per side?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mrs. BOXER. Will my friend tell me when I will have 1 minute remaining?

The PRESIDING OFFICER. Absolutely.

Mrs. BOXER. Mr. President, in the next 5 minutes I want to describe this amendment. I cannot imagine anyone in the Senate voting against this amendment. Having said that, I predict that this amendment will not be agreed to because there seems to be some type of agreement going on that this bill can not change at all, in any way, shape, or form. But I want to give the Senate a chance.

When I was growing up, my mother said, If you ever borrow anything, give it back. Try not to borrow money, but if you borrow money, give it back as fast as you can.

I think all of us here understand that to be a responsible person, you have to be responsible for your debts. There is no question about that. It is not right to borrow money and then turn your back on the person who extended that credit to you, whether it is an individual or a credit card company or a bank. But in this bill there seems to be absolutely no bounds. It seems to be that the person who lent you the money has no responsibility whatsoever to be diligent about it, to be fair about it, to be reasonable about it, or, frankly, to be smart about it. And the credit card companies know they have the perfect bill coming toward them. There is absolutely no responsibility placed on them.

I ask anyone listening to this debate to think about how many credit card applications you receive in the mail in a week's time, in a month's time. Once I started saving it up. Then they started sending them to my grandson. He is 9. I was surprised they didn't send it to our cat. I suppose they would, if cats could pay interest.

But let me tell you about this particular egregious situation I am trying to fix. I think it would shock Americans to understand this. The fastest growing part of the credit card business is the young people in this country. The credit card companies entice

our young people to go into debt, go into debt, and they know the sky is the limit as to what they can charge for that debt. Is it 10 percent? No. That would be low. Is it 20 percent? That would be low. There was an amendment here to cap it at 36 percent, and that failed. We are talking about taking a young person who doesn't have a clue and offering them credit cards.

If I were to ask you how many cards does the average young person have—people between 18 and 24—I would say one or two—the answer is six credit cards. This is the fastest growing group.

That is also why the credit card companies go ahead and give more and more credit cards to people who were defaulting the most. Frankly, it is because they are still making a mint. Credit card profits have gone up in the last 10 years 100 percent.

When you analyze the stories—I have read them in the Wall Street Journal—you find they are getting paid back for sure, but they are not getting the full 30–percent interest. But the poor people who are caught in this have a real problem.

Here is what the amendment says. If a credit card company issues a seventh credit card to someone below the age of 21 without a responsible party cosigning, and if that individual has a job that pays less than the poverty level, then in fact if there is a default the judge should take into consideration the facts. It is as simple as that. Why wouldn't a credit card company ask you that simple question, How many cards do you have? And, What is your income? After all, this is unsecured debt. It is not secured by anything but the person.

We are saying, if, in fact, an individual defaults, they are younger than 21, they had no cosigner, they earn below the poverty line, they already have six cards, if they wind up in bankruptcy court, the judge should consider this situation.

This is about responsibility on the part, yes, of the person who is using the card, but also on the part of the credit card companies.

I yield the floor.

AMENDMENT NO. 67

Mr. DODD. Mr. President, I urge my colleagues to support the amendment I offered yesterday. It is an amendment designed principally to protect children and families caught in the bankruptcy situation.

Let me state again at the outset, clearly there is a need to reform the bankruptcy laws—none of us disagree with that—but it must require a sense of balance. People are moving through the bankruptcy courts, but we also need to keep in mind that families, particularly children, the innocents in this, are not going to be so disadvantaged by the process that we create a more serious problem than the bankruptcy issue suggests.

Under this bill as presently crafted, there are several areas where we could do a far better job of seeing to it that children and families are going to be protected to the extent possible, while creditors are also going to have an ability to reach assets. This bill provides too strong a straitjacket for families.

I offer four different parts in this amendment. The first modifies the means test to require greater flexibility and reasonableness in calculating a debtor's ability to pay. Under the bill you have $1,500 a year as the total amount allowed for educational expenses for children. The reality of the 21st century, putting aside parochial school education, even for a public school, $1,500 is too low a figure for the children to get the proper education they need. Our amendment raises that ceiling from $1,500 to $5,000.

Second, the amendment ensures that support payments, child support payments, alimony, if there are any resources coming from the earned income tax credit or the child tax credit, specifically money intended to support children and their needs, should not go to creditors. Those moneys ought to be kept out of the estate. Again, child support, alimony, EITC, child tax credits. The bill does not presently allow that. We specifically passed that legislation to assist poor families and families with children.

Third, the amendment enables debtors going through bankruptcy to keep personal property normally found in and around the home. The bill does list some new items that were not in the earlier versions of the bill. That is a simple reasonableness test. Rather than having a finite list, if these goods have no resale value at all, and they are used for children and used for providing for the needs of the household, they ought to be excluded. That is the third part of this amendment.

Fourth, the amendment ensures that debtors are not forced into bankruptcy court to seek to prove that food, diapers, school uniforms, and other items are luxury items. Under the present law, the bankruptcy current law allows $1,225 to be charged within 60 days of filing bankruptcy. This bill drops that number to $500 within 90 days. That is a totally unrealistic number. Anyone who has young children will tell you $500 over 90 days to provide for your children is far too low. We tried to offer a compromise, saying any charges amounting to $1,000 within 70 days. As I say, existing law is $1,225 within 60 days. The bill says $500 within 90 days. Our amendment says $1,000 within 70 days.

Lastly, as part of this amendment, if the creditors think these are luxury items, let them make the allegation in court. This bill requires these dependent women, most of them single women raising children, have to prove these are not luxury items. The burden ought to be on the opposite side of the equation.

That is what the amendment is designed to do. There are four pieces to it. It is specifically designed to offer some relief to the innocents, the children and the families who are going through this process—not to blame them or put them in an untenable situation.

This amendment is supported by a long list of organizations across the country dealing with women and children. I ask unanimous consent that list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACES, Association for Children for Enforcement of Support, Inc., American Association of University Women, American Medical Women's Association, Business and Professional Women/USA, Center for Law and Social Policy, Center for the Advancement of Public Policy, Center for the Child Care Workforce, Children NOW, Children's Defense Fund, Church Women United, Coalition of Labor Union Women (CLUW), Equal Rights Advocates, Feminist Majority, Hadassah, International Women's Insolvency & Restructuring Confederation (''IWIRC''), MANA, A National Latina Organization, National Association for Commissions for Women (NACW), National Black Women's Health Project, National Center for Youth Law, National Council of Jewish Women, National Council of Negro Women, National Organization for Women.

Mr. DODD. This bill deserves to make some changes. I hope our colleagues look closely at what is in the bill and support this amendment and see we can provide a sense of balance and relief for children and families who need some protection when they go through the bankruptcy process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDING OFFICER. The minority time is expired and the majority has 5 minutes on each of four amendments.

AMENDMENT NO. 62

Mr. HATCH. Mr. President, let me talk about the Boxer amendment for a minute or two. The purpose of this amendment is to restrict credit availability for young adults.

Others believe that using credit cards to build a history is a laudable objective for young adults. This amendment does not distinguish between legitimate uses by young adults from other uses. It applies to any person under 21, regardless of his or her financial independence or employment situation.

Also, note that 18-year-olds can serve in the military, get married, vote, and in most States serve on juries, all without a cosigner.

This bill does address the issue of credit card debt and younger adults. Title XII of the bill provides for a study regarding the impact of the extension of credit to individuals who are claimed as dependents for Federal income tax purposes and are in college.

The same section provides other relevant credit card-related reforms that are the result of careful negotiation. These include several amendments to

the Truth in Lending Act which includes creating increased disclosure requirements for credit card statements and mandating the credit card companies assist borrowers in determining how long it will take to pay off their credit card balances; requiring certain additional disclosures to borrowers buying and refinancing their homes; require additional disclosures regarding credit card so-called introductory rates; extending Truth in Lending requirements to Internet-based credit card solicitations; adding new disclosures related to the credit card late fees; and prohibiting cancellation of credit cards solely due to borrowers' failure to incur finance charges.

These are good changes, in my view, and the view of the majority of the Senate. They were all carefully negotiated over the last 8 years. We do not need to come in now and make further revision to delicate compromises such as this. I urge my colleagues to vote against the Boxer amendment. It would do more harm than any good.

AMENDMENT NO. 67

I wish to speak against Senator DODD's amendment 67. This is an omnibus amendment. There is nothing else to call it. This late in the game, a successful amendment usually targets specific provisions in the bill for improvement. And getting agreement on one of these rifleshot amendments can be like herding cats.

Quite frankly, this is a message statement. It asks us to protect families. This is a noble goal, but it is not one served by this amendment. This amendment alters the carefully negotiated means test to permit nearly all filers to avoid a presumption of abuse. In some respects, it is redundant.

For example, it lists as expenses many things that are already covered in the IRS standards used in the bill to determine appropriate expenses. In other areas, it is excessive. For example, it increases the allowable expenditures for private school education from $1,500 to $5,000.

The worst part of this is it created a category of miscellaneous expenses. This is not just a loophole. My gosh, you could drive a truck through the opening for abuse this amendment puts through the middle of the means test, a test that has the purpose of a reduction in abusive bankruptcy filings.

I said it once, and I say it again. This means test is the heart of this bill. The means test is fair. The means test has been carefully negotiated between Democrats and Republicans over 8 years of time. I have to oppose any effort to revise the means test at this late day. I urge my colleagues to vote against this amendment.

AMENDMENT NO. 110

I rise in opposition also to the Durbin amendment. It takes a broad swipe at the means test again. First, the very purpose of the means test is to treat genuinely impoverished filers fairly. If you are below the State median income, you are not subject to the means test. It is as simple as that. This amendment undermines the ability of a court to verify a person's income when he or she is filing for bankruptcy.

This amendment would remove the basic requirement that debtors fill out certain forms to verify their income. You have to fill out forms to get a driver's license, to get a job, to apply for a retirement plan. For example, when an individual applies for food stamps, there is a complete application process to verify income and assets before this benefit is approved. Is it too much to ask that if the Government is going to allow you to liquidate all of your debts, you at least show the court definitive proof of your income?

Instead, this amendment allows a person simply to declare that his income is below the State median income. All he has to show are ''calculations or other information.'' In other words, take their word for it. That seems to open the door to the fraud this bill is designed to prevent.

I believe most people are honest, but inevitably there are some applicants who will take advantage of the looser requirement. As Ronald Reagan said in a different context: Trust but verify.

I urge my colleagues to vote against the Durbin amendment, as well.

AMENDMENT NO. 66

I oppose the Harkin amendment. This was part of a problematic Rockefeller amendment we have already voted down. I respect my colleagues' dedication to the issue, but I must urge my colleagues to vote no.

I am pleased we invoked cloture yesterday by a vote of 69–31. If that is not bipartisan, I do not know what is. This bill has been in the works for 8 years now, and I hope we can soon pass it for the fifth and final time. My colleague from Wisconsin has 14 amendments pending. I also understand there are roughly another six or so Kennedy amendments and two Durbin amendments. That is 22 amendments between these Senators.

I wonder if my colleagues know how many other amendments are pending. The answer is three: one from the ranking member of the Judiciary Committee, one from Senator AKAKA, and one from Senator TALENT. What does this tell you?

I respect my colleagues from Wisconsin, Massachusetts, and Illinois, but why are they dragging out this process? Their amendments constitute roughly 88 percent of the remaining omnibus bill. I suspect that even if we accepted every one of the amendments, all three would not vote for this legislation. So this is important. I respect the right of Senators to bring up their germane amendments in postcloture situations. If they want to do it that way, they certainly can.

I oppose every one of those amendments. I think a majority of the Senators should oppose those, as well. We need to get this bill done. We know we have to keep it intact in order to get the House to take it and get it signed by the President. It is time to bring this to an end. We have been at it for 8 years and we have worked to accommodate everyone we possibly could. It has been a bipartisan vote every time, overwhelming bipartisan vote every time. By gosh, it is time to vote on this bill.

How much time remains?

The PRESIDING OFFICER. There is 13 minutes.

Mr. HATCH. Is that my time? I am prepared to yield back the remainder of my time and proceed to a vote.

Do we have the yeas and nays on all four amendments?

The PRESIDING OFFICER. We do not.

Mr. HATCH. I ask for the yeas and nays on all four amendments.

The PRESIDING OFFICER. All time is yielded back.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered on all four amendments.

Mr. HATCH. I ask unanimous consent that after the first 15-minute rollcall vote the remaining three votes be 10 minutes each.

The PRESIDING OFFICER. That order has been entered.

The question is on agreeing to the amendment of the Senator from Illinois, Mr. DURBIN.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—42

Akaka	Durbin	Lincoln
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Kennedy	Reed
Cantwell	Kerry	Reid
Clinton	Kohl	Rockefeller
Conrad	Landrieu	Salazar
Corzine	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden

NAYS—58

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Snowe
Carper	Hagel	Specter
Chafee	Hatch	Stevens
Chambliss	Hutchison	Sununu
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Johnson	Thune
Collins	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	
DeMint	McCain	

The amendment (No. 110) was rejected.

AMENDMENT NO. 66

The PRESIDING OFFICER. Under the previous order, there will now be 2

minutes of debate equally divided on the Harkin amendment No. 66. The Senator from Iowa.

Mr. HARKIN. Mr. President, this amendment basically protects workers who are able to take a priority preference in back wages, vacation pay, severance pay, and sick pay when a company goes bankrupt.

Under the bill, there is a limit of $10,000. That is fine; I do not touch that. This amendment lifts the 180 days. For example, let's say a worker has worked for a company for 10 years and they get $500 a year severance pay. The company goes bankrupt. Normally, you get $5,000, but because of the 180 days, you only get $250 for which you get a priority; otherwise, you get in line with the other creditors.

What this does is lift the 180 days. There are other examples. If a farmer today has a warehouse receipt for grain in an elevator, there is no time limit on that. They can go 2, 3, 4 years. For alimony there is no time limit. For child support, there is no time limit. There ought not be an arbitrary time limit for a worker who has backpay, sick pay, or severance pay coming. That is all this amendment does.

I cannot believe the House will not send this to the President if we adopt this amendment. Do not even try to sell that to me.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I yield back all time and ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The question is on agreeing to amendment No. 66. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 32 Leg.]

YEAS—48

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Clinton	Kohl	Salazar
Collins	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Snowe
Dayton	Levin	Specter
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Wyden

NAYS—52

Alexander	Coburn	Enzi
Allard	Cochran	Frist
Allen	Coleman	Graham
Bennett	Cornyn	Grassley
Bond	Craig	Gregg
Brownback	Crapo	Hagel
Bunning	DeMint	Hatch
Burns	DeWine	Hutchison
Burr	Dole	Inhofe
Chafee	Domenici	Isakson
Chambliss	Ensign	Kyl
Lott	Santorum	Thomas
Lugar	Sessions	Thune
Martinez	Shelby	Vitter
McCain	Smith	Voinovich
McConnell	Stevens	Warner
Murkowski	Sununu	
Roberts	Talent	

The amendment (No. 66) was rejected.

AMENDMENT NO. 62

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Boxer amendment, No. 62.

Will the Chamber please be in order.

The Senator from California.

Mrs. BOXER. Here are the facts, my colleagues. The fastest growing segment of bankruptcies occurs in Americans who are 25 years and younger. The average number of credit cards a college senior has is not two, three, or four, but six. The average senior in college has six credit cards and credit card companies are marketing to our young people at rock concerts, on college campuses. We want responsibility but on all sides.

My amendment puts a modicum of responsibility on the credit card companies. It simply says a bankruptcy judge should consider an appropriate response if a credit card company has given a card to a person who is under the age of 21, has no responsible cosigner, an income below the poverty level, and the person already had six credit cards.

My friends, I hope you will not march down and vote ''no'' against this amendment. How can you explain at home that a credit card company would have no responsibility if they have given a seventh credit card to a person below the age of 21 who has income below the poverty level? I hope you will support the Boxer amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. MCCONNELL. I yield back our time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any Senators in the Chamber wishing to vote?

The result was announced—yeas 40, nays 60, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—40

Akaka	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Harkin	Obama
Boxer	Inouye	Pryor
Byrd	Jeffords	Reed
Cantwell	Kennedy	Reid
Chafee	Kerry	Rockefeller
Clinton	Kohl	Salazar
Conrad	Landrieu	Sarbanes
Corzine	Lautenberg	Schumer
Dayton	Leahy	Stabenow
Dodd	Levin	Wyden
Dorgan	Lieberman	
Durbin	Lincoln	

NAYS—60

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dole	Murkowski
Baucus	Domenici	Nelson (FL)
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Carper	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Johnson	Thomas
Collins	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner

The amendment (No. 62) was rejected.

Mr. MCCONNELL. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. I ask unanimous consent the last vote in this series in relation to the Dodd amendment occur at 2:45 today; provided further that following that vote, the Senate proceed to vote in relation to the Kennedy amendment numbered 68; further that no amendments be in order to the amendments prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Hawaii.

AMENDMENT NO. 105

Mr. AKAKA. Madam President, I rise today to speak on my pending amendment, No. 105.

Section 106 of the bill does not allow consumers to declare personal bankruptcy in either Chapter 7 or Chapter 13, unless they receive a briefing from an approved nonprofit credit counseling agency within six months of filing. The bill also requires each consumer who receives bankruptcy protection to take a credit counseling instructional course. The credit counseling instructional course requirement is intended to provide financial education to consumers who declare bankruptcy so they can attempt to avoid future financial problems.

Approximately one-third of all credit counseling consumers enter a debt management plan. In exchange, creditors can agree to offer concessions to consumers to pay off as many of their debts as possible. These concessions can include a reduced interest rate on the amount they owe and the elimination of fees. However, most credit card companies have become increasingly unwilling to significantly reduce interest rates for consumers in credit counseling. A study by the National Consumer Law Center and the Consumer Federation of America revealed that 5 of 13 credit card issuers increased the interest rates they offered to consumers in credit counseling between 1999 and 2003.

The amendment would amend section 502(b) of the bankruptcy code to prevent unsecured creditors, primarily credit card issuers, from attempting to collect accruing interest and additional fees from consumers in credit

counseling if the creditor does not have a policy of waiving interest and fees for debtors who enter a consolidated payment plan at a credit counseling agency.

Since it appears that Congress will require that consumers enter credit counseling before filing for bankruptcy, we must ensure that credit counseling is truly effective and a viable alternative to bankruptcy.

Credit card issuers, undermining the good intentions of consumers who enter into credit counseling, have sharply curtailed the concessions they offer to consumers in credit counseling, contributing to increased bankruptcy filings. According to a survey by VISA USA, 33 percent of consumers who failed to complete a debt management plan in credit counseling said they would have stayed on the plan if creditors had lowered interest rates or waived fees.

A large body of research, conducted by such entities as the Congressional Budget Office and the Federal Deposit Insurance Corporation, shows that aggressive lending practices by credit card issuers have contributed to the current high level of bankruptcies in this country. Credit card companies have an obligation to ensure that effective alternatives are readily available to the consumers they aggressively pursue.

As a show of support for the effectiveness of consumer credit counseling, especially as an alternative to bankruptcy, credit card issuers should waive the amount owed in interest and fees for consumers who enter a consolidated payment plan. Successful completion of a debt management plan benefits both creditors and consumers. For many consumers paying off their debt is not easy. My amendment will help people who are struggling to repay their obligations. I encourage all of my colleagues to support this amendment to help consumers enrolled in debt management plans to successfully repay their credits, free themselves from debt, and avoid bankruptcy.

My amendment has been endorsed by the Consumer Federation of America, U.S. Public Interest Research Group, Consumer Action, and the National Consumer Law Center.

I ask unanimous consent that a letter of support for my amendment be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSUMERS UNION,
CONSUMER FEDERATION OF AMERICA,
March 7, 2005.

Re support for Akaka credit counseling and payday loan amendments to bankruptcy bill.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The undersigned national consumer organizations strongly support your amendments to the bankruptcy bill (S. 256) that would encourage more responsible lending by payday loan companies and keep more consumers in credit counseling and out of bankruptcy.

MAKING CREDIT COUNSELING A MORE SUCCESSFUL ALTERNATIVE TO BANKRUPTCY

S. 256 *requires* consumers to seek credit counseling within six months of filing for bankruptcy. However, the credit card companies that created credit counseling have taken steps in recent years that undermine it as a viable alternative to bankruptcy for some consumers. By slashing funding for legitimate credit counseling agencies and charging consumers in credit counseling higher interest rates than in the past, credit card companies are leaving debt choked Americans with few options other than bankruptcy.

If Congress is going to require that consumers enter credit counseling before filing for bankruptcy, it must ensure that credit counseling is truly an effective and viable alternative to bankruptcy. This amendment would stop a credit card company from attempting to collect on debts in bankruptcy unless the creditor has a policy of waiving interest rates for consumers who enter credit counseling.

Consumers who enter a credit counseling ''debt management plan'' agree to discontinue credit card use and to make one consolidated payment to the credit counseling agency, which then forwards the funds to the appropriate credit card company. In exchange, creditors agree to offer two key ''concessions'' to help consumers pay off as much of their debts as possible: a reduced interest rate on the amount they owe and the elimination of fees that have accrued.

Unfortunately, credit card companies in recent years have become increasingly unwilling to reduce interest rates for consumers in credit counseling, which has led to more bankruptcy filings. According to a study by the National Consumer Law Center and Consumer Federation of America, five of 13 major credit card issuers increased the interest rates they offered to consumers in credit counseling between 1999 and 2003. Currently, only two major credit card issuers (Wells Fargo and American Express) completely waive all interest for consumers in credit counseling. The majority of other major credit card companies charge interest rates in credit counseling above 9 percent, with issuers like Capital One, General Electric and Discover charging rates of 15 percent or more.

The increasing refusal of creditors to offer low interest rates causes more consumers to drop out of credit counseling and to declare bankruptcy. According to a survey by VISA USA, one-third of consumers who failed to complete a debt management plan in credit counseling said they would have stayed on the plan if creditors had further lowered interest rates or waived fees. Moreover, almost half of those who dropped off the plan had or were going to declare bankruptcy.

It is ironic that the same creditors whose aggressive and reckless lending practices have contributed to the increase in bankruptcies in this country have weakened credit counseling in recent years. It is hypocritical for the credit card industry to demand that Congress give them bankruptcy relief while closing off credit counseling as an effective alternative for many consumers.

PROHIBITING THE RECOVERY OF PREDATORY PAYDAY LOANS

This amendment would prohibit payday lenders from having a claim on these loans in bankruptcy. Lenders who entice cash-strapped consumers to write checks without money in the bank to cover them as the basis for making ''payday loans'' should not be allowed to use the bankruptcy courts to collect. Payday loans trap borrowers in a cycle of debt when consumers flip loans to keep their checks from bouncing.

Last year, consumers paid $6 billion to borrow $40 billion in small cash advances from over 22,000 payday loan outlets. These loans of $100 up to $1,000 are secured by personal checks or electronic access to bank accounts and must be repaid in full on the borrower's next payday. Lenders charge annual interest rates on these loans that *begin* at 390 percent, with finance charges of $15 to $30 per $100 borrowed.

Payday lending condones check-kiting as a financial management tool and encourages the unsafe use of bank accounts. Loans phased on check/debit-holding get paid before other obligations, due to the severe adverse consequences of failing to make good on a check. Some lenders threaten criminal prosecution or court martial of military consumers for failure to make good on the check used to get a payday loan. If the consumer files bankruptcy to stop the cycle of debt, some lenders then try to convince the bankruptcy court that the payday loans should not be discharged.

Consumers need comprehensive small loan protections, reasonably-priced alternatives to payday loans, and sound financial education. In the meantime, Congress should prevent any lender that entices consumers to write checks without funds on deposit or to sign away electronic access to their bank accounts from also using the bankruptcy courts to collect on their usurious loans.

If this nation is truly going to reduce bankruptcies, lenders must first exercise more responsible lending decisions and be more responsive to consumers who show a genuine interest in resolving their debt problems. We applaud you for moving to make payday and credit card lenders more accountable in their treatment of consumers.

Sincerely,

JEAN ANN FOX,
Director of Consumer Protection, Consumer Federation of America.
TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.
SUSANNA MONTEZEMOLO,
Policy Analyst, Consumers Union.
LINDA SHERRY
Editorial Director, Consumer Action.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.
JOHN RAO,
Staff Attorney, National Consumer Law Center.

Mr. AKAKA. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I would like to have the attention of the Senate to discuss my remaining amendments to the bankruptcy bill. I think my colleagues are aware that I strongly oppose this bill and that I am

very disappointed in the process that has brought us to this point. I do not believe the sponsors of this bill and its supporters in the other body have dealt fairly with the proposed amendments.

I understand the Senator from Utah came to the floor earlier in the day and was complaining that I had a number of amendments and that I did not intend to vote for the bill.

I have been a legislator for 22 years. This is not an auction. Even if you are going to vote against a bill, if you have an amendment you believe will make it a better bill, it is still a worthy consideration. I was told in the committee, where I wanted to offer many of these amendments, that I should not offer them, that I should wait until the bill came to the floor to offer the amendments. So in most cases that is exactly what I did, being assured there would be a good faith response and consideration of the amendments. Well, of course, that is not what has happened to date. And I categorically reject the idea that simply because you do not think a bill is good, you do not have a proper role on the floor of the Senate in trying to improve it.

This has not been a legislative process worthy of the Senate. Members of the Judiciary Committee, as I just said, were implored to save their amendments for the floor. Then, when we got here, we were told no amendments could be accepted. It was a classic bait and switch. Negotiations have been minimal and pro forma. Extremely reasonable amendments were rejected supposedly because they were not drafted correctly, according to the sponsors, but there was no willingness to work on the language of the amendments so they could become acceptable.

One of the most disheartening examples of this way of dealing with good faith amendments was the treatment of the amendment offered by the Senator from Florida concerning identity theft. Senator NELSON simply wanted to give some special consideration to people who are forced into bankruptcy because other people—criminals, in fact—ran up debts in their names. It is awfully hard to argue with a straight face and pretty hard to claim that victims of identity theft should have to pay at least some of their debts if they have a higher than median income. The debts are not even theirs. Believe it or not, this bill might actually force someone to file for chapter 13 and make payments on debts for 5 years that were not even run up by the person filing for bankruptcy. I find this to be incredible. Unfortunately, the response from one of the bill's cosponsors was: ''well, you have a good point here, but your amendment is just too broad.''

In the Senate I have come to love in my 12 years here, the Senate I served in just a few years ago when we last considered the bankruptcy bill, Senators and their staffs would have sat down and they would have worked out language that was not too broad. There would have been some negotiation. In many cases an agreement would be reached. But in this debate that kind of legislating is apparently forbidden.

What is most disheartening is that so many Senators sent here to represent their constituents, to exercise their independent judgment for the good of their States and the country, have been willing to blindly follow instructions from the shadowy coalition of groups that are behind this bill—mainly the credit card industry—and vote down even the most reasonable of amendments. It is just sad when there is no debate on amendments, no discussion, no negotiation, just an edict from outside of the Senate, and the ''no'' votes follow every time.

Last night I offered a very important amendment concerning small businesses. I spoke for 10 or 15 minutes about the amendment and explained some new data on small business bankruptcies that I think shows these provisions are actually very wrongheaded. After what has gone on here, I, of course, didn't expect to win the amendment, but I did think we might have a debate of sorts. The sponsors of the bill didn't even bother to come down and debate. Not one Senator made a single response to my arguments. They sent an emissary to deliver the message right before the vote that the sponsors expected a ''no'' vote. Nonetheless, I have not given up hope that some real legislating can still take place in the waning moments of our consideration of this bill.

I have a number of amendments, 14 to be exact, pending before this body. They are entitled to receive votes before we vote on final passage. They are reasonable and modest amendments. They are not so-called message amendments. They are not intended to be poison pills or bring down the bill by causing a huge disagreement with the House. They are intended to improve the bill because this bill is now not an academic exercise, as we know. It is going to become law. It is going to be the first bankruptcy reform of any great substance since 1978. It is going to become law, probably in a matter of weeks, and it will have a real impact on real people all over this country.

Last night my staff was able to have some discussions about these amendments with staff for the sponsors. I am hopeful that some of these amendments can be accepted or negotiated. I am prepared to entertain any reasonable offer. If I feel the sponsors have made a legitimate effort to look closely at my amendments and consider them with an open mind, and if some number of those amendments are accepted, I will not seek votes on all the amendments. No one likes a vote-arama, as it has come to be known, when we vote on a bunch of amendments in a row and often people don't know what they are voting on. But we will have one if the attitude that has been on display for the last week and a half continues.

I know my bargaining position is not strong. But I hope my colleagues will look at these amendments and realize that they are modest and might actually improve the bill in a way that wouldn't offend anyone in this entire body from the point of view of their philosophy about what bankruptcy law should be. Writing laws that work is what the Senate is supposed to do. Here is an opportunity to do that.

Let me talk briefly about each of these amendments because I do not intend to call each one up individually for debate. Some of them are very simple. Let me reiterate that I am open to discussion on any of these amendments. If there is something about the drafting that could be improved, I urge the sponsors to work with me and help me perfect the amendments so they can become part of the bill in a managers' package or perhaps even by unanimous consent.

The first amendment I will discuss is amendment No. 92 which has to do with section 106 of the bill on credit counseling and education. The bill requires credit counseling and credit education for people who file for bankruptcy. Section 106 of the bill requires debtors to obtain a credit counseling briefing before filing a bankruptcy case and to take a credit education course as a condition of receiving a discharge. However, the provisions provide no recourse for debtors who have exigent circumstances that would make it actually impossible for them to take a credit education course after filing or to get credit counseling, even during the 30-day grace period the bill now allows.

Let me give a few examples. I know these cases may be rare, but they are real. There are people in this country who are homebound and do not have a telephone or Internet access. I wish there weren't, but there are. Are we going to decide in the Senate that these unfortunate citizens can never file for bankruptcy because they are in that situation? How about people who suffer from dementia caused by Alzheimer's or some other disease? They sometimes have to file for bankruptcy because of massive medical bills, and they can do so through someone who has power of attorney. Do we think anything is to be gained by requiring a debtor who is ill with a terrible, incurable disease, not even competent to sign legal papers anymore, to take a credit education course?

How about U.S. soldiers fighting in Iraq or Afghanistan or serving anywhere overseas? It is a tragedy that some of our young men and women serving their country have to file for bankruptcy, but that is actually happening right now every day. Yes, there is Internet access in Iraq, but do we want to require a soldier to sit down at a computer to take a credit counseling or credit education course while they are in Iraq in order to protect his or her family back home from financial ruin?

By the way, the Servicemembers Civil Relief Act does not address this problem. Nothing in that statute would excuse members of the military, even those on active duty serving overseas, from the credit counseling and education requirements. Our fighting men and women are already having to file for bankruptcy despite the protections of that law. My amendment creates simply a safety valve to address this problem by giving courts discretion—it just gives them discretion—to waive the credit counseling and education requirements based on a sworn statement filed by the debtor with the court.

The bill also fails to address the potentially prohibitive cost of credit education to some debtors. In contrast, section 111, which addresses credit counseling services, requires credit counseling organizations to provide counseling without regard to ability to pay the fee for such a service. My amendment borrows the same language, requiring credit education to be offered for a reasonable fee and offered to all persons without regard to ability to pay the fee.

These changes are essential to ensuring that the bankruptcy system is still an option available for those who truly need it. Let's not make these counseling and education requirements, which I think have a great deal of merit, into some kind of a trap for some unusually situated but still good-faith debtors whom the bankruptcy decision is actually designed to help. I know this issue is particularly important to Senator SESSIONS. I hope to be able to work with him to reach agreement. He and I have worked together well on this and a number of other issues in the past with the regard to the bankruptcy bill. I hope he will follow suit on this as well.

The amendment I have just discussed deals with the impact of this bill on a very few, unusual, and very hard-luck debtors. The same is true of the next amendment I want to discuss concerning current monthly income. There are actually two amendments I have filed on this topic, amendment No. 96 and amendment No. 97. I am suggesting two alternative approaches to deal with the same problem.

Section 318 requires debtors in chapter 13 whose current monthly income is over the median to file a 5-year plan rather than a 3-year plan. Requiring debtors to file a 5-year plan means it will take them longer to get back on their feet and they will end up paying more money to emerge from bankruptcy. Only those with a higher income should be subjected to this longer plan. But because of the way the income threshold is calculated in the bill, there is a great possibility of arbitrary and unfair results.

Whether this requirement applies depends on the income that debtors earn in the 6 months before bankruptcy rather than their actual income at the time of filing. In other words, the median income test is based on what you used to make, not what you make at the time of bankruptcy. To understand this problem, imagine person A has an income of $60,000 and that the State's median income is $45,000. A month before bankruptcy, she loses her job and is forced to take a job that pays only $30,000. Under the bill, her current monthly income works out to $5,000, even though she only makes $30,000 at the time of the bankruptcy and even if she never finds a higher paying job. So she would be forced into a 5-year plan, even though her real income is well below the threshold the bill's drafters apparently had in mind.

Imagine person B has an income of $40,000 before and after filing for bankruptcy. Because person B's income is below the median, she will be allowed to enter a 3-year plan even though she actually makes more than person A. So the definition of current monthly income as the average of the prior 6 months' income may not make sense in some cases.

My amendments provide two alternative ways to allow for a different and more accurate monthly income to be calculated. In addition, under my amendment, if a debtor's income decreases during the bankruptcy case to less than the median income, then a debtor who is at that time on a 5-year plan can seek to have the plan reduced to a 3-year plan.

Incidentally, the bill already provides a safety valve for calculating current monthly income in chapter 7. The court can reduce the income used for the means test if special circumstances are present. Special circumstances such as job loss or a sharp reduction in income from a home business would certainly qualify. I think it is an oversight that this was not done for chapter 13. So I hope the sponsors will simply fix this problem.

This change also needs to be made in another section of the bill where current monthly income plays a significant role; that is, in determining whether a debtor will have to use the restrictive IRS standards under the means test to figure out what living expenses will be permitted.

Again, it is unfair to someone filing in chapter 13 to make that determination based on past income rather than what the person actually makes.

This is a commonsense fix. We shouldn't import the means test to chapter 13 without allowing for special circumstances adjustments to income. Either of my amendments would bring chapter 13 in line with chapter 7 on this score.

The next amendment I want to discuss also has to do with chapter 13. There is a peculiar problem in this bill. I have often called it a bill that is at war with itself. What I mean by that is that the bill's overriding purpose—the argument that we have heard over and over on the floor in the past week 26 and a half—is to get more people to file for bankruptcy under chapter 13, which will require them to pay some of their debts over a 3- or 5-year period before getting a discharge of their remaining debts. This is what the means test is all about—getting debtors to pay some of their debts if they are able. That is chapter 13. You would think, then, that the bill's sponsors and supporters would want to make sure that chapter 13 remains a viable option for those debtors. But the bill also includes a number of provisions that make it less advantageous to file in chapter 13 and harder to complete repayment plans. That is a bill at war with itself, and I predict this bill will have very bad consequences if it is adopted as it stands. The chapter 13 bankruptcy trustees and judges have certainly told us that over and over again for the past 8 years. Apparently, no one wants to listen.

One amendment I have offered to try to undo one of the problems this bill creates for chapter 13 amendment No. 95, having to do with discharge of back taxes. Current bankruptcy law allows debtors who complete chapter 13 payment plans to discharge all taxes that were owed more than 3 years before the time of the petition. This allows debtors to look forward to someday improving their financial situation without facing a lifetime of debt repayment for old taxes. But the bill makes it less advantageous to file for bankruptcy under chapter 13 by disallowing the discharge of many of these older taxes.

Under section 707 of the bill, a standard now applicable only to chapter 7 would be applied to chapter 13. In chapter 7 cases, debtors may only discharge old taxes if they filed a tax return for those taxes at least 2 years before filing for bankruptcy. That limitation does not currently apply to chapter 13 cases. By the way, under chapter 13 today, as in chapter 7, taxes owed for the last 3 years must still be paid in full as priority debts, which enables the IRS to collect what is available from the debtor's disposable income with very low collection costs, and older taxes are paid pro rata with other creditors for duration of the plan. Society benefits at the completion of a debtor's chapter 13 payment plan when the debtor is able to rejoin the economic system as a tax-paying wage earner.

This is an important protection. Typical older tax cases involve debtors who have recently gotten back on their feet and found a job after years of economic or family displacement. The displacement is often the result of serious health or substance abuse problems, unstable employment or a marital collapse. These debtors may have drifted through many jobs over several years without keeping the W–2 or 1099 forms needed to file tax returns. Having finally found steady employment, debtors are often faced with a wage garnishment for these old taxes just at the time they are attempting to get back on level financial ground. The debtors may need to file for bankruptcy to stop the garnishment so that they will have

enough money left from take-home pay to pay rent, child support, or other financial necessities.

But if old taxes cannot be discharged through a chapter 13 plan, as proposed in this bill, debtors will have no reason to try to pay what they can afford to pay through a chapter 13 plan, because they will know that at the end of the 3- to 5-year payment plan, they likely will again face an IRS garnishment for the older taxes.

My amendment addresses this problem. I should also point out that the amendment retains the bill's prohibition on the discharge of taxes for which a fraudulent return was filed. So we are talking about discharging of back taxes that are not the result of fraud, just the result of nonpayment.

The next amendment also deals with chapter 13. It is amendment No. 94, and would correct a serious drafting error in section 102(h) of the bill that threatens to unintentionally eviscerate chapter 13. Refusing to remedy this error would be disastrous for the very chapter of the code that the sponsors of this bill want to encourage people to use.

In chapter 13 cases, debtors must devote all they can afford—that is, their disposable income after living expenses—to payments under their plan. These payments go to administrative expenses, secured creditors and unsecured creditors. In fact, most chapter 13 cases filed under current law are filed in order to deal with secured debts, to prevent foreclosure on a home or repossession of a car.

As written, section 102(h) of this bill would instead require that for debtors who are below median income, all disposable income must go to unsecured creditors, and none could be used for secured debts or administrative expenses. This is an obvious drafting error, since the purpose of section 102(h), as I understand it, was simply to require debtors with income over the median income to use the IRS standards contained in the means test to determine their allowable living expenses but to leave the law unchanged for debtors below median income.

If this error is not corrected, the bill will make it impossible for debtors below median income to use chapter 13. Now some in this body may be under the mistaken impression that people who file for chapter 13 bankruptcy are well off and they will only choose that chapter if they are forced to by this bill. That is obviously not true since chapter 13 exists now and millions of people use it voluntarily. The large majority of chapter 13 filers are actually below median income. In fact, in the 1980s, one study found that about 15 percent of chapter 13 filers were actually below the poverty line. Very few people file in chapter 13 because they have large amounts they can afford to pay to unsecured creditors. They do it to protect their homes from foreclosure or their cars from repossession. While there certainly are exceptions, people who file for bankruptcy are generally poor, whether they choose chapter 7 or chapter 13.

Currently, with no means test in place, about 30 percent of bankruptcy debtors voluntarily file under chapter 13. Even the sponsors of this bill claim that only another 8–10 percent of those who now file under chapter 7 would be switched to chapter 13 if the means test were implemented. So even with the means test, the majority of chapter 13 debtors will almost certainly be below median income. That means the drafting error I have discussed is a big deal. We have to fix this problem before it becomes law.

A second problem created by this error has to do with administrative expenses in chapter 13 cases. Administrative expenses in bankruptcy include the fees of lawyers and trustees who are paid to process the case.

Section 102(h) of the bill would effectively impose a 10 percent cap on chapter 13 administrative expenses for debtors with income over the median. And it would prohibit any payments at all for administrative expenses for debtors below the median. What that means is that there will be no lawyers to handle chapter 13 cases at all. Chapter 13 will become a nullity.

This bill has contained a number of antilawyer provisions over the years, but I cannot imagine that the drafters of this bill intended to effectively prohibit attorney participation on behalf of debtors in chapter 13 cases.

My amendment will correct these drafting problems. It makes clear that the means test expense standards will be used for chapter 13 cases filed by debtors who make more than the median income. It makes sure that below median income debtors can pay their secured creditors. And it will allow administrative expenses, including attorneys' fees, to be included in the plan payments. I urge my colleagues to support this amendment if you don't want this bill to write chapter 13 out of existence.

Another of my amendments deals with a provision that bankruptcy lawyers are very concerned about. This is amendment No. 93 on debt relief agencies. The amendment is strongly supported by the American Bar Association. This amendment would exclude lawyers from the provisions dealing with ''debt relief agencies'' in sections 226 to 228 of the bill. As currently written, the bill would impose a number of unnecessary burdens on the attorney/client relationship in bankruptcy proceedings. Subjecting attorneys to the ''debt relief agency'' provisions will add little substantive protection for consumers, but require substantial amounts of extra paperwork and cost.

Requiring lawyers to call themselves ''debt relief agencies'' will do more to confuse the public than to protect it. I think members of the public generally understand what the word ''lawyer'' means, but the phrase ''debt relief agency'' is vague and unhelpful. It is also misleading, because there are significant differences between lawyers and nonlawyers, but both would be identifying themselves as debt relief agencies under this bill.

Only lawyers are permitted to give legal advice, to file pleadings, or to represent debtors in bankruptcy hearings. Perhaps most importantly, only lawyers are bound to confidentiality by the attorney-client privilege. These distinctions are important to consumers, but they would be obscured by the bill as written.

Furthermore, these provisions would apparently apply to any law firm that provides bankruptcy services, even if that law firm were primarily providing landlord-tenant advice—even to landlords—criminal defense services, or other unrelated services. Large firms with only one bankruptcy practitioner may be required to advertise themselves as ''debt relief agencies.''

I think this will be immensely confusing to consumers without any apparent benefit.

The substantive provisions on ''debt relief agencies'' would add little to the already existing laws and regulations governing attorney conduct. Attorneys currently have extensive duties relating to disclosures, fees, and ethical obligations. These provisions would micromanage that relationship without adding any meaningful substantive protection.

I think the intention of the bill's drafters was to prevent attorneys from tricking consumers into bankruptcy by not telling consumers from the beginning that they work on bankruptcy issues, and then sort of springing the idea of bankruptcy on the consumer. But rather than simply prohibiting this sort of unethical behavior, the bill tries to micromanage the attorney-client relationship by requiring large amounts of additional paperwork and disclosure. Extra paperwork substantially burdens the consumer and adds to the cost of bankruptcy. Given that attorney conduct is already regulated, I believe these provisions are unnecessary as applied to attorneys and provide no clear benefit.

As I mentioned, the American Bar Association strongly supports this amendment. The Federal Bar Association is also strongly in favor of it.

Mr. President, I ask unanimous consent that a letter from the Federal Bar Association be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEDERAL BAR ASSOCIATION,
OFFICE OF THE PRESIDENT,
Cincinatti, OH, February 28, 2005.

Re Attorney Liability Provisions in S. 256, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER and SENATOR LEAHY: As the Senate prepares to consider the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005'' (S. 256), I

write to express the opposition of the Federal Bar Association to several provisions in the proposed legislation that would in our opinion inappropriately increase the potential liability and administrative burdens of bankruptcy attorneys under the Bankruptcy Code. Those provisions would require attorneys to: certify the accuracy of factual allegations in the debtor's bankruptcy petition and schedules under penalty of court sanctions (section 102); certify the ability of the debtor to make payments under a reaffirmation agreement (section 203(a)); identify and advertise themselves as ''debt relief agencies'' subject to a variety of regulations (sections 227–229).

The Federal Bar Association, with over 16,000 members throughout the country, is the only national association composed exclusively of attorneys in the private sector and government who practice within or before the federal courts and agencies. Our mission is to serve our nation's federal legal system. In our view, the above-referenced provisions of the proposed legislation pose a serious threat to the efficient operation of the bankruptcy laws and the bankruptcy courts. We are joined in this opinion by many state and national bar associations and bankruptcy practitioners.

The cumulative potential liability and additional administrative burden imposed upon debtor attorneys by the legislation may be expected to generate a substantial negative impact on the availability of quality legal counsel in the bankruptcy system. The above-referenced provisions will discourage many attorneys from agreeing to represent debtors and significantly increase the fees and expenses of clients. The requirement that a bankruptcy attorney certify the accuracy of factual allegations in the debtor's bankruptcy petition and schedules, for example, will essentially require the attorney to become a guarantor of the petitioner's statements. The effect of these draconian changes may be to drive many consumer bankruptcy practitioners out of this area of practice, depriving individuals of adequate legal representation and forcing them to seek less responsible alternatives such as unlicensed bankruptcy petition preparers or to file their petitions themselves. They may not even receive adequate advice regarding the necessity or advisability of filing for bankruptcy. Therefore, the attorney liability and ''debt relief agency'' provisions contained in the proposed bankruptcy legislation may have an adverse effect on debtors, creditors and the bankruptcy system itself. While these changes may not be intended by the advocates of the legislation, they are foreseeable.

The spirit of the above-referenced provisions can be better satisfied by the imposition of non-dischargeability sanctions upon debtors who falsify their bankruptcy schedules and tougher action by bankruptcy courts and the United States Trustee to enforce Bankruptcy Rule 9011 when misconduct by a party exists. These reforms would reduce bankruptcy fraud and abuse without unfairly harming honest debtors or the bankruptcy system.

We call upon you to support amendments that may be offered on the Senate floor that would remove the inappropriate and unnecessary sanctions and burdens described above from the proposed bankruptcy legislation.

Thank you for considering these views. If you would like more information on the PBA's views, your staff may contact our counsel for government relations, Bruce Moyer, at (301) 270–8115.

Very truly yours,

THOMAS R. SCHUCK,
National President.

Mr. FEINGOLD. Mr. President, another amendment I have pending is really concerned with making the bankruptcy system work better for both creditors and debtors. It is amendment No. 90, dealing with notice.

The bill contains three separate notice requirements which seem to create significantly differing procedures for notice.

The first provision requires debtors to send notice to the creditor at whatever preferred address the creditor has specified in correspondence with the debtor shortly before bankruptcy.

The second provision says that debtors and the court must send notice to the creditor at an address the creditor files in each individual case.

And the third provision says the court must send notice to an address the creditor files for all cases, with an exception if a different address is filed for an individual case.

The first requirement, that debtors send notice that bankruptcy has been filed to creditors at the creditors' preferred address, is actually unworkable and unfair and serves no apparent purpose. Debtors often do not receive correspondence within the last 90 days prior to filing for bankruptcy, and even when they do, they may not know that the correspondence is significant. Essentially, debtors might end up having their cars repossessed despite the fact that they filed for bankruptcy and repossession should be prevented by the automatic stay because they threw away what appeared to be junk mail from the creditor. And bankruptcy lawyers are forced to search through their clients' correspondence for an address or a change of address.

I think we can come up with a much more streamlined notice provision that will satisfy the interests of both creditors and debtors.

My amendment will eliminate the first notice provision of the bill and instead establish a central national registry for creditors' correspondence addresses. The registry would be available to debtor's counsel and the court on the Internet, as is already done for government creditors under the Federal Rules of Bankruptcy Procedure. The same address could be used for all notices, except when a creditor files and serves a different address for an individual case.

The bill generally provides for such a registry, and the courts are moving in that direction anyway, but the bill has two significant flaws. First, the bill is vague about whether a registry is to be maintained by each court or in a central national database, and it does not provide that the registry will be made available to the public.

Second, the bill's current language is unworkable because counsel will have to constantly check court records in every case to see if a new address was filed with the court. My amendment requires parties to use any address that has been filed more than 120 days previously with the registry. Within that 4-month period, the addresses should be updated in various software programs that bankruptcy attorneys use to find addresses, or they can recheck the registry to find if addresses have changed.

The exception to sanctions for a violation of an automatic-stay violation must also be amended so it does not include creditors who have clear actual notice of a stay. As it stands now, the bill creates a loophole that will encourage rampant abuse. For example, a debtor who filed for bankruptcy the previous week might return home from work to find her car being repossessed. The creditor might claim the debtor did not provide proper notice of the bankruptcy because notice was not sent to the correct address and therefore the creditor can proceed with the repossession, even if the debtor has her time-stamped bankruptcy petition in her hand and shows it to the repo man. It would not even work in that circumstance, which is an absurd result.

Finally, the language of the bill should be clarified so that actual notice reasonably calculated to come to the attention of a creditor or its agent is sufficient to allow sanctions for violation of the stay.

Correcting the notice provisions will protect the interest of debtors and creditors. Do we really want to leave in place a provision that is so obviously contradictory and unworkable and that could lead to a result as unjust as the example I just described? I hope not.

I also believe that creditor as well as debtor attorneys will appreciate the streamlined notice provision in my amendment and the establishment of a national registry available on the Internet.

It is my understanding the Administrative Office of the Courts does not favor the current language of the bill because it has essentially been overtaken by events. The courts are moving to electronic filing and notice registries. Keep in mind, this bill started about 8 years ago. An awful lot has happened in that time to make this much more feasible and, frankly, much more helpful to whoever is working on this, whether it be creditor representatives or debtor representatives.

My amendment is consistent with that movement. The bill is not.

One of my amendments is just a clarification of the effect of my bill and should not be controversial at all. It is amendment No. 100 on reaffirmation.

Section 524(1) allows creditors to accept payments made ''before and after filing'' of a reaffirmation agreement with the court. It also provides that a creditor may accept payments from a debtor under an agreement that the creditor believes in good faith to be effective.

I am concerned that these provisions could allow creditors to accept and retain payments where the reaffirmation agreement is ultimately held to be invalid.

In the late 1990s, in a celebrated case, the retailer Sears was required to disgorge literally hundreds of millions of dollars in payments made by debtors

pursuant to reaffirmation agreements that were invalid because they were never filed with the court. This bill would permit acceptance of payments before a reaffirmation agreement is filed. This will leave an ambiguity that would potentially require courts to allow a creditor such as Sears to retain all those payments.

The current language in section 203 of the bill suggests that if Sears in good faith believes those invalid agreements to be legitimate, it could have retained the payments. This would undermine the integrity of the bankruptcy system, and I can see no policy justification at all for allowing creditors to retain payments made pursuant to invalid reaffirmation agreements.

This amendment would clarify that courts have the option to order the disgorgement of payments made pursuant to invalid reaffirmation agreements or to order other appropriate remedies. Again, it is simply a logical correction to an ambiguity in the bill. If it is not necessary, I would appreciate the sponsors saying so on the record so that the legislative history on this point is clear.

Finally, I hope the sponsors will consider agreeing to amendment No. 87 on inflation adjustments. As a result of the efforts of Senator GRASSLEY and my efforts, one of the provisions in this bill is a long overdue inflation adjustment to the dollar amounts in chapter 12, the chapter covering farm bankruptcies. Those dollar amounts were originally set in 1986. We increase the farm bankruptcy amounts to account for inflation since 1986 and then index them for future inflation.

Inflation has severely limited the usefulness of chapter 12 to family farmers, and I am pleased that this bill addresses that problem as well as others with chapter 12.

Virtually all the dollar amounts in the Bankruptcy Code are now subject to section 104, which provides for their adjustment every 3 years in accordance with the cost of living. But not all of them are. The reason that the family farm amounts needed to be increased so much in this bill is because they were not previously adjustable under section 104.

This bill adds a number of new sections or subsections with dollar amounts that are not indexed, including the family fisherman provision, household goods, educational savings limits, certain venue thresholds, and the applicability in chapter 13 of the additional monthly allowance for individuals over a family of four.

Again, this is just a commonsense technical issue. Almost all of the dollar values in the current bill should be added to section 104 and adjusted for inflation, just as the family farm values are, and the homestead exemption, and many others. I implore my colleagues: Do not make the same mistake that was made with respect to family farms back in the mid-1980s.

Do not set up a situation where 10 or 20 years from now some provision is clearly too low, but it cannot be fixed for 7 years while Congress works on another big revision to the Code.

I do hope the sponsors can accept this amendment. If there is an amount they have a real argument about that should not be indexed, I am willing to consider that. I removed one provision in this amendment having to do with the definition of financial participant when I heard from the Bond Market Association that that one should not be indexed. So I am willing to be reasonable, and I hope my colleagues who have worked so hard and long on this bill over the past 8 years will be reasonable as well, as this moves to final passage.

I have taken some time in going through these amendments, and perhaps people watching would say: Why is this Senator waiting until the last minute to raise these issues?

Of course, that is not the case at all. I waited patiently in the Judiciary Committee, provided these amendments well in advance in almost every case for everybody to review. I started to offer the amendments in committee and make my arguments. We received no substantive response at all in the committee on almost every amendment.

When one Senator actually could not take it anymore on the other side and offered a substantive response to my amendment, he said, I apologize to the chairman for making an argument, basically because apparently they had been instructed not to talk about these amendments.

He asked: Senator, why are you doing this? We need to get this out of committee. Why do you not wait until the floor to offer these commonsense amendments, and then we in good faith will work together to try to solve these problems?

Well, that is not what is happening. This is just a slam dunk. There is no danger anymore about considering these amendments. They got cloture. There are plenty of votes. What is the harm of fixing the bill? What is the harm of doing the right thing? What is the harm of doing our job as legislators and making sure we do not stick the entire bankruptcy community with these provisions that do not make any sense? Come on, we can do this now. It is safe to go back in the water. This is going to become law, and not a single one of my provisions will do any damage whatsoever to the fundamental intent or goals of this bill.

I do thank my colleagues for their attention in this presentation. These are highly technical issues. Some may seem minor, and some may actually be minor. I do not want to take the Senate's time on these amendments, which is why I attempted to get them considered in committee and have tried to make myself available at every instance to discuss them over the past week and a half.

I look forward to discussions over the next few hours with the managers of the bill. Perhaps we can still reach agreement that will make some of these votes unnecessary.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 51

Mr. BINGAMAN. Mr. President, I call up amendment No. 51 to the bankruptcy bill.

The PRESIDING OFFICER. Is there objection?

Without objection the pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 51.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend certain provisions regarding attorney actions on behalf of debtors, and for other purposes)

On page 14, strike line 2 and all that follows through line 4 and insert the following: ''tion of a party in interest, may order the''.

On page 14, line 7, insert ''and reasonable trustee fees based upon the trustee's time in prosecuting the motion,'' after ''fees,''.

Beginning on page 14, strike line 10 and all that follows through page 15, line 17, and insert the following:

''(ii) the court grants such motion.

''(B) Any costs and fees awarded under subparagraph (A) shall have the administrative priority described in section 507(a)(2) of this title, and such costs and fees shall be excepted from the discharge described in section 727 of this title in the current or any successor cases filed under this title.

On page 16, strike line 8 and all that follows through line 10 and insert the following: ''the''.

On page 28, between lines 17 and 18, insert the following:

(l) ADDITIONAL GROUND OF NONDISCHARGEABILITY.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (18) the following:

''(18A) for costs or fees imposed by a bankruptcy court under section 707(b)(4) of this title, whether imposed in the current case or a prior case filed under this title.''.

On page 28, line 18, strike ''(k)'' and insert ''(m)''.

On page 59, strike lines 16 and 17 and insert the following:

''(5) The declaration shall consist of the following certification:

On page 60, strike line 4 and all that follows through line 10.

On page 182, line 4, strike **"EXPANSION"** and insert **"ENFORCEMENT"**.

On page 182, line 7, insert ''fraud and abuse exist in the bankruptcy system and that in order to curb this fraud and abuse, Federal bankruptcy courts should vigorously enforce'' after ''that''.

On page 182, line 8, strike ''App.)'' and insert ''App.).''

On page 182, strike line 9 and all that follows through line 19.

On page 459, lines 24 and 25, strike '', even if such amount has been discharged in a prior case under this title''.

Mr. BINGAMAN. Mr. President, this amendment would help to ensure that legal representation remains affordable and accessible to lower income Americans who are forced into bankruptcy.

As currently written, the bill contains provisions that would significantly increase attorney's fees and expenses related to the filing of a bankruptcy petition. Under existing law, attorneys can rely on information that a client provides regarding the extent and the value of their assets, such as the worth of a car, household furniture, and that sort of item.

In an effort to combat the perceived abuse of the bankruptcy system, this proposed bill requires an attorney to certify that the attorney has made an inquiry into the client's assertions, and it subjects the lawyers to personal liability for inaccuracies in a debtor's list of assets. Although the proponents of this provision may argue that the change will prevent abuse, I believe it is an unnecessary change that will have significant unintended consequences.

Under existing law, attorneys are already required to certify that pleadings, motions, and other materials have factual support pursuant to bankruptcy rule 9011. Attorneys are also prohibited from knowingly making any legal or factual misrepresentation to the court or assisting a client in any abuse. If we want to address misconduct by attorneys, what we need is better enforcement of those existing rules. If we want to address abuse by debtors in submitting their lists of assets, we should seek to hold those individuals responsible. My amendment would do that by making specific debts nondischargeable if the debtor lied about them in their bankruptcy schedule.

With regard to the unintended consequences of these changes, in order to protect themselves from harsh sanctions, attorneys would be forced to conduct a costly investigation into the value and the actual existence of the client's claimed assets. This would not only directly increase the attorney's expenses, it would also likely raise very significantly other costs such as malpractice insurance. The Attorneys' Liability Protections Society, Inc., which is a malpractice carrier that insures 15,000 lawyers in 27 jurisdictions around the country, has estimated that the impact of this provision could result in the immediate increase of insurance premiums for bankruptcy lawyers from 10 to 20 percent.

The bankruptcy bill contains another provision with regard to reaffirmation agreements that will also likely result in higher attorney's fees and costs.

Current law provides that debtors can reaffirm a debt and therefore keep a specific asset, as long as the attorney certifies the decision to do so is voluntary and will not create undue hardship for the debtor.

As drafted, S. 256 would require attorneys, where there is a presumption of hardship, to certify that debtors would be able to make future payments under the agreement. Attorneys are not accountants and would have to conduct extensive audits of their client's finances in order to determine if that client would be able to afford specific payments. Of course, that would drive up attorneys' fees as well.

These additional costs would negatively impact on the accessibility of legal representation and court administration in two primary ways. First, they would reduce the ability of lawyers to take on pro bono cases and would make these legal services unavailable to many indigent debtors. In my own State, the law clinic at the University of New Mexico Law School has said if the bill passes in its current form, it would likely have to stop doing bankruptcy work for indigent clients due to the additional cost and concerns related to the attorney sanction provision. Second, these costs would place additional administrative burdens on the Nation's courts by increasing the number of individuals who would be representing themselves in the court proceeding due to their inability to afford an attorney. According to the Chief Bankruptcy Judge for the District of New Mexico, cases involving pro se debtors, debtors who are representing themselves, can take up to 10 times as much time to process as cases where debtors are represented by counsel. As such, even a small increase in the number of cases being processed without counsel could create substantial administrative burdens on our bankruptcy courts.

So the amendment I have called up would do three things. First, it would replace the attorney liability language in section 102 of the bill with new language that would impose nondischargeable sanctions on debtors who lie on their bankruptcy schedules. Second, it would urge bankruptcy courts to more vigorously enforce existing rules regarding the sanctioning of attorneys where misconduct has been demonstrated. These changes would properly address abuse in the bankruptcy system by holding debtors responsible for intentional misrepresentations in listing the worth of their assets and holding attorneys responsible if they assist in any such abuse. Last, the amendment would maintain existing law with regard to the certification of reaffirmation agreements by attorneys.

I understand the need to punish attorneys for abuse of the bankruptcy process but there are ways to do this without unnecessarily driving up the cost of legal representation. This, in my view, is an amendment that is reasonable. The American Bar Association has endorsed it. I urge my colleagues to support it as well.

I have talked to various of my colleagues in the Senate. I have watched the amendments being defeated in the Senate for the last several days. I believe I am correct that every single amendment that has been offered to this bill has been defeated, many of them on pretty much a party-line vote. So it is clear to me that offering this amendment and actually requiring a vote on it will not be productive.

I do believe it is a significant issue. It is an issue that should be addressed before this bill is completed and goes to the President for signature. I hope my colleagues will consider the need to address this issue and make changes in the bill. But, because of the lack of support, at this point I will not ask for a vote on the amendment.

AMENDMENT NO. 51 WITHDRAWN

I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, the business here in the Senate is the bankruptcy bill. I want to talk about an amendment I had offered to this legislation that does not get a vote now as a result of cloture being invoked.

The amendment I offered on behalf of myself and Senator DURBIN was offered on a timely basis and the majority decided they did not want to have a vote on the amendment. So when cloture prevailed—and I voted against cloture—this amendment fell also. As a result of that, I do not intend to vote for the underlying bill. The Senate should have voted on my amendment. It was in order. Admittedly it was nongermane to the underlying bill, but still, under the rules, it was in order for me to offer it.

The amendment was an amendment that would create a special committee to investigate contracting waste, fraud, and abuse in the country of Iraq.

We have had almost no oversight hearings here in the authorizing committees of the Senate on how money is being spent with respect to contracting in Iraq. But we have held some Democratic Policy Committee hearings and have heard from a good many whistleblowers and others about what is happening to American taxpayers' money in the country of Iraq. Let me describe some of the testimony we have heard.

This picture is perhaps the best description. At the last hearing I chaired, this person—his face is not seen in this picture, but this person standing here holding some of this money brought this photograph with him. This is $2 million. This $2 million wrapped in Saran wrap in $100 bills was provided to

a contractor. The contractor was doing business in Iraq with our Government and the Coalition Provisional Authority, which was our Government as well. Our witness, who worked for the Coalition Provisional Authority, said that people were told when they needed to get paid on their contracts: Bring a bag. Just bring the bag and you get loaded with cash.

The witness said he heard there was a vault with billions of dollars in cash. At any rate, on the day this picture was taken a contractor showed up and collected $2 million in cash in a bag.

Let me describe this contractor, by the way, because there is some legal action with respect to this contractor. I will not use names, but the names were part of the hearing. It was on C–SPAN. This contractor was a firm started by two individuals, formerly in one of the branches of our service, retired, who showed up in Iraq and wanted to be a contractor. They didn't have any money. One of them, I guess, had $450, according to news reports, and they wanted to go into business. So they proposed to get a contract to provide security at an airport in Iraq.

They got the contract. They got $2 million in cash delivered to them. That is how they started the business. But their business was not necessarily on the level. A couple of their employees decided to become whistleblowers because they were so sickened by what they saw happening. The whistleblowers allege that this company was taking forklift trucks off the airport property, painting them blue, and then selling them back to the Coalition Provisional Authority—which, by the way, was us: Ambassador Bremer and us, the American taxpayer.

So this company, these two fellows running this company, were taking forklift trucks, sending them off to a warehouse to paint them, and shipping them back and reselling them to us, the American taxpayer.

The people who blew the whistle on this received death threats, they said, and were quite scared. But despite all the obvious problems, this company was given $100 million in contracts in Iraq.

Listening to the witnesses at our DPC hearings describe what was going on in Iraq, it was unbelievable. There were brand new $85,000 trucks used by contractors in Iraq. When they get a flat tire, what do they do with the truck? They leave it on the road to be torched; brand new $85,000 trucks. If something plugs up the fuel pump, they leave it; just abandon it. How about a company that decides to buy hand towels for soldiers ordered by the U.S. Army, small hand towels. The company that gets the contract to do it decided to nearly double the price of the hand towels because they wanted to put their company logo on the hand towels used by American soldiers. Or the company that orders 25 tons—yes, 50,000 pounds—of nails to be sent to Iraq for construction. The nails were the wrong size. They ordered the wrong size, and 50,000 pounds of nails are sitting on the sands of Iraq paid for by the American taxpayer.

The contractor that gets the contract to put in air conditioning units in buildings in Iraq paid for by the American taxpayer goes to a subcontractor, who goes to another neighborhood crew, and they pass all this money along, and pretty soon what was to have been air conditioners is just a couple of fans in a room, while the American taxpayer pays for air conditioners.

It is unbelievable what is happening with respect to waste, fraud, and abuse, and nobody cares. It is the American taxpayers that are taking a bath.

You can't get oversight hearings in this Senate. Do you know why? Because it would be embarrassing to the administration.

A couple of the contracts I just talked about involve Halliburton. People say when you talk about Halliburton you are going after the Vice President. Not at all. When you talk about Halliburton you are talking after the company that got giant no-bid contracts, and there is no accountability for the way the money is spent. Halliburton was charging the taxpayers for 42,000 meals a day served to U.S. soldiers. The problem is they were only feeding 14,000 soldiers a day. They were overcharging the American taxpayer by 28,000 meals a day.

Where is the accountability? Who cares about that? When is this Congress going to decide it matters?

We passed a nearly $20 billion reconstruction bill. I didn't support it. I offered the amendment to strip the $20 billion for reconstruction in Iraq. But the majority voted to authorize that spending. The reason I didn't support the funding was Iraq has the second largest reserves of oil in the world. A soldier told me they were standing in a depression in the sand one day and the soles of their shoes got black from oil. This is a country with the second largest reserves of oil in the world. It could easily securitize future oil that will be pumped from under the sands of Iraq and use that money to reconstruct Iraq. That ought not be the American taxpayers' job.

But this Senate and this Congress crafted legislation which was signed by this President that says we are going to actually send over nearly $18 billion. Twenty-billion dollars was the request. Senator WYDEN and I got an amendment passed that cut wasteful spending by $1.8 billion. But there is still over $18 billion in the spending pipeline, $15 billion of which has not yet been spent.

I talked to this fellow holding this wad of cash which he was about to put in a bag for the people who have allegedly cheated the American taxpayers. You talk to these folks, and they will tell you that passing around there is like passing an ice cube around. Pass it to three or four hands, and pretty soon you have a lot less. It melts away.

That is what is happening to the American taxpayers' money with respect to reconstruction in Iraq.

These are some of the headlines about Halliburton and those contracts with the Department of Defense: ''Uncle Sam Looks into Meal Bills; Halliburton Refunds $27 million,'' February 3, 2004. On February 4, 2004, ''Halliburton Faces Criminal Investigation; Pentagon Proving Alleged Overcharges for Iraq Fuel.''

By the way, the recently retired person in the Pentagon who purchased fuel—it was his job to purchase fuel in the world and deliver it in war zones; he did it for over 30 years—testified that American taxpayers are being overcharged by a dollar a gallon in Iraq. A buck a gallon, adding up to tens of millions of dollars. The American taxpayers got hosed here. Nobody seems to care.

The question is, what do we do about all of that?

In 1941, on the eve of the Second World War, there was a Democratic Senator here in this Chamber. While there was a Democrat in the White House, that Democratic Senator got in a car and drove around the country to military bases and said there is massive waste and abuse going on, and we ought to get to the bottom of it. He convinced the Congress to create a special committee. The Senator was Harry S Truman, and the committee was eventually called the Truman Committee. They saved an estimated $15 billion by exposing waste. That was a Democratic Senator with a Democrat in the White House.

But the fact is, you can't get hearings now because we have one party that controls the White House, the House, and the Senate, and nobody wants to embarrass anybody.

It is not my intent to embarrass anybody. It is my intent to provide accountability and get to the bottom of how this money is being spent.

Remember the company that got the money shown in this picture, the one where whistleblowers had their lives threatened? The whistleblowers filed suit under the False Claims Act alleging that this company is defrauding the American taxpayer. But the United States Justice Department decided they would not intervene. Do you want to know why? The United States Justice Department said, Well, if they were defrauding something, it was the Coalition Provisional Authority in Iraq, and the Coalition Provisional Authority is not the same as the United States government. The Justice Department's position, according to an assistant U.S. Attorney, was that defrauding the United States is not the same as defrauding the United States taxpayer. The Coalition Provisional Authority in Iraq was created by an executive order, in a very specific document. To have the U.S. Justice Department take the position that defrauding the Coalition Provisional Authority—

which is us—is not the same as defrauding the American taxpayer is Byzantine.

The question is, why do we not allow a vote on an amendment to create a special committee of the U.S. Senate? This would be a committee with four members selected by the majority party and three members by the minority party, with subpoena power to have the kind of investigation and the kind of oversight that the American taxpayers ought to expect of this Congress. Why don't we have a vote on that?

I offered the amendment on time, and the majority party did not wish to have a vote on it.

Perhaps if we had oversight hearings we would hear more about that which I have already heard, the American taxpayers paying $45 for cases of what I call ''pop'' back home, Coca-Cola or Pepsi-Cola, $45 a case; or renting SUVs for $7,500 a month; $2.65 a gallon for fuel delivered in Iraq when the just retired head of the Defense Energy Support Center testified they could have supplied it for half that price; $18.6 million of U.S. equipment missing that a company was given to manage, and now they can't find it, don't know where it is, and don't know what happened to it.

The question is, does anybody here care? If so, why would we not vote on an amendment to set up the kind of committee I would suggest?

As all of us know, we are rushing headlong to have a vote on bankruptcy. We will have that vote. But there is apparently no interest in trying to get to the bottom of these questions I asked. According to the Inspector General of the Coalition Provisional Authority, there was one Iraqi ministry that had 8,206 guards on the payroll, which was the responsibility of the CPA. The problem is there are only 602 working there; 8,206 were being paid for by the CPA, but only 602 were working. The Coalition Provisional Authority actually had possession of nearly $9 billion in funds that actually came from Iraqi oil that belonged to the Iraqi people. The inspector general says that money cannot be accounted for. Where did it go? What happened to it? When will someone start caring about those things?

I have asked a lot of questions. We have held hearings in the Democratic Policy Committee on these subjects, because the authorizing committees will not hold hearings on these subjects. I have offered an amendment in the Senate on a timely basis. Because cloture was invoked, the majority party knew they would not require Senators to vote on this amendment to this bill. But obviously, this amendment will come back. I will have the opportunity to offer it again, will offer it again, and we will vote in the Senate, provided there is any appetite at all about what is happening to the American taxpayers' money.

I have previously supported bankruptcy legislation. I had hoped to support it this time. But because I was precluded from getting a vote on an amendment that I offered on a timely basis, and because of other concerns I have with the bill, I don't intend to vote to advance this legislation. I say to my colleagues, we will vote on this amendment at another time because I will offer it again. We will find a way to force a vote in the Senate on creating a special committee to investigate this waste, fraud, and abuse.

It is unthinkable at a time when we have massive Federal budget deficits, a fiscal policy that is far off track at the same time we have massive trade deficits, the combination of which is well over $1 trillion a year, that no one seems to care much about waste. If ever I have seen an example of waste, fraud, and abuse that is sickening and disgusting, it is in this area. This Senate owes it to the American people to create a committee to investigate, if the authorizing committees in the Senate will not do their job and hold oversight hearings.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 68

Mr. KENNEDY. Mr. President, I call up amendment 68.

The PRESIDING OFFICER. The amendment is pending.

Mr. KENNEDY. Mr. President, the most disturbing thing about this supposed bankruptcy reform is the utter lack of fairness and balance in the legislation. It gets tough on working families facing financial hardship due to a health crisis, job loss caused by a plant closing or offshoring of a job, or a military callup to active duty. The laws of bankruptcy are being changed to wrest every last dollar out of these unfortunate families in order to further enrich the credit card companies.

However, the authors of this legislation look the other way when it comes to closing millionaires' loopholes and ending corporate abuse. The legislation fails to address the real crisis in corporate bankruptcy where reorganization plans often benefit the very insiders whose greed and mismanagement brought down the company at the expense of the workers, the retirees, and the creditors, and it fails to address the shocking abuse of millionaires hiding their assets in so-called asset protection trusts, placing them completely beyond the reach of creditors.

This bill also fails to deal effectively with the unlimited homestead exemptions in a few States which allow the rich to hold on to their multimillion-dollar mansions while middle-class families in other States lose their modest homes. We truly cannot allow this bill to pass without closing the millionaires' homestead loophole once and for all. It has become a national embarrassment. Millionaire deadbeats buy a huge mansion in Florida and Texas to shield their wealth from creditors. The harsh rules of bankruptcy being established by this bill will trap hard-working middle-class families, but the unlimited homestead exemption will allow rich debtors to escape.

Existing bankruptcy laws allow those in bankruptcy to protect from their creditors certain assets, the nature of which is largely determined by State law. Most States make some allowance for homes or homesteads people live in, but the allowance is a modest one, too modest, in many States, for elderly people with large equity in the homes they have lived in for most of their lives.

However, five States—the most notorious of which are Texas and Florida—have unlimited homestead exemptions. This means debtors in those States can stash away millions, even tens of millions of dollars in the States and leave their creditors with nothing.

S. 256 leaves this gaping loophole wide open. It will allow the real abusers of the bankruptcy system to file for bankruptcy and to still keep their fortunes and properties intact while leaving their creditors with nothing. S. 256 has created some minor exceptions to the homestead exemption, none of which would be applicable in many of the most egregious cases. The bill fails to deal with the problem head on of multimillionaires who abuse bankruptcy by stashing away wealth while they declare bankruptcy.

My amendment caps the amount allowed for the homestead exemption at $300,000. This is an adequate allowance for most people. The average home in the United States is $240,000, a great deal higher in many of the regions of the country and lower in some parts of the country. This $300,000 is an adequate allowance for most people and would end the exploitation of the homestead exemption to hide assets from creditors. It would add some measure of fairness and balance to a bill that sorely needs some fairness and balance.

Some of the most egregious abuses we have currently and that this legislation fails to deal with are the kinds of abuses that we have in the case of Ken Lay, the former chairman of Enron, who owns a $7 million penthouse condominium. Mr. Lay made over $200 million from Enron stock and $19 million in bonuses. Other executives received bonuses as high as $5 million. Over 5,000 employees lost their jobs, and 20,000 lost an estimated $1 billion in retirement savings. Now, Ken Lay has been able to put some $7 million in a penthouse condominium in Houston's exclusive River Oaks neighborhood with 12 rooms covering 12,800 square feet.

We are going to find there have been hard-working men and women who have had health insurance—half of all of the bankruptcies are the result of dramatic health bills. Seventy-five percent of those individuals had health insurance. And, as we have pointed out during the course of this debate, if your family is touched by cancer, you, by definition, are going to have $35,000 to $40,000, at a minimum, out-of-pocket expenses. And that, in many situations, is enough to drive a family into bankruptcy.

If you have another serious health need, it will do the same. If you have important needs for children, such as spina bifida, autism, or other kinds of significant and important children's diseases, it will run into tens of thousands of dollars.

What we have seen in our study of these bankruptcies is half of the bankruptcies are caused by these medical disasters. Yet, we are unprepared to give any kind of consideration to these hard-working people who have taken out health insurance to try to provide for their families and, through no fault of their own, have been caught up in these dramatic health care bills. They are struggling and try to avoid bankruptcy and meet their responsibilities. But once they get caught in this net that is included in the bill, they will be punished—and I say ''punished''—by the provisions in this bill which are unduly harsh and I believe unduly unfair.

But not Ken Lay. Not Ken Lay. Here it is: He will be out there in his $7 million penthouse condominium in Houston's River Oaks neighborhood, with 12 rooms and covering 12,800 square feet.

Or Andrew Fastow, the former chief financial officer of Enron, who recently built a large house in River Oaks valued in the millions, his home will not be taken. He will be able to go home every night to that home and be able to live there while we are seeing the homes taken from working families whose only problem was that their family was hit by cancer or another serious illness. We are seeing their homes taken, when we see individuals who have basically violated the trust of their company and of the workers get a free ride in the form of millions of dollars.

You call that fair? You call that fair? All this amendment says is, we will have a uniform standard. We have a uniform standard in this amendment. We are going to have a uniform standard with regard to the equity in the house. We are not going to let these individuals go off and be able to shield all of their income.

We find Jeffrey Skilling, Enron's former president and chief executive officer, lives in a 15-room house in River Oaks valued at over $4 million.

WorldCom's chief financial officer, Scott Sullivan, who was charged with falsifying the books by more than $3.8 billion, recently built a 4-acre, $15 million estate in Boca Raton, FL, with an 18–seat movie theater, art gallery, and lagoon.

You are telling me we are going to protect those individuals in their homes when we have single mothers who cannot get the child support or alimony, through no fault of their own, and they are thrown into bankruptcy and in danger of losing their homes? And the cruelty is the innocent individual, more often the wife, who is not getting the alimony or child support, has a very good chance of losing her home—but not these individuals, not Dennis Kozlowski, the former CEO of Tyco International, who is said to have used $19 million from a no-interest loan from his company to pay part of the cost of a $30 million compound in Boca Raton, FL, called, ironically, Sanctuary. So $30 million he has been able to put away there.

There are hundreds of thousands of workers who have lost their jobs, lost their savings, lost their health care, lost their pensions—but he is going to be protected by this legislation. Where is the fairness in this legislation when it comes to this issue in terms of homes?

We have a law firm in hock for $100 million. Former Baseball Commissioner Bowie Kuhn moved to a mansion in Ponte Vedra Beach, FL, and immediately sought protection from the creditors. And the list goes on and on and on.

What is the current situation with regard to the homes and homesteads? Well, if you get caught up with a claim against you, and you live in any of these States—in New Jersey, in Pennsylvania, or Maryland—there is no homestead exemption. Your home, if you have the blessings to have a home, is thrown right in there, sold right off, put right on the market, and out you go.

In the State of Michigan, it is $3,500 in value. In Kentucky, it is $5,000 of value; Georgia, $5,000; South Carolina, $5,000; Ohio, $5,000; Alabama, $5,000; Virginia, $5,000, plus $500 per dependent; Tennessee, $5,000 in value, and $7,500 with your home if you are a married couple; Indiana, $7,500; Illinois, $7,500; Missouri, $8,000.

But there is no limitation for the Ken Lays, the Jeffrey Skillings, the Dennis Kozlowskis putting aside tens of millions of dollars that is going to be protected.

These families will have that amount of equity that will be protected. You can go into some other States: New York, $10,000; North Carolina, $10,000; and Wyoming, $10,000. And some States go on up to $75,000—Connecticut. In Montana it is $100,000. In my State of Massachusetts, it is $300,000. But there is no limit at all, no dollar limit—some acreage amount—in Texas. In Texas, it is 10 acres in an urban area. It can be in downtown Dallas or downtown Houston. Or it can be 200 acres in a rural area. You are protected. If you have a home on 10 acres, wherever it is in an urban area—or 200 acres in a rural area—you are not touched by this legislation. And that is true in varying degrees for the six States.

So we have to ask ourselves, why treat these six States separately and differently from all of the other States, and particularly where, in the other States, when people fall into bankruptcy, one of the first assets they are going to lose is their home.

So at the appropriate time we will have an opportunity to vote on my amendment. As I say, this amendment closes that homestead loophole but permits, notwithstanding any other provision, the maximum amount of homestead exemption that may be provided under State law shall be $300,000.

If you get a judgment against you for $400,000, they sell your home, but at least that $300,000 is enough that you may be able to get something, particularly if you are an elderly person living on an income of $1,200 or $1,500 a month, you might be able to survive.

But the idea outside of that is that you are effectively taking away the homes and putting them at risk for 44 States and permitting 6 States to effectively circumvent this legislation in a very important way. It is wrong. I hope our colleagues and friends can support our measure.

AMENDMENT NO. 70

Mr. President, I would ask that amendment be temporarily set aside, and I call up amendment No. 70.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment No. 70 is already pending.

Mr. KENNEDY. I thank the Chair.

Mr. President, this amendment is designed to protect single mothers and their children, who are forced into bankruptcy because they did not receive the child and spousal support they were entitled to, from the harsh provisions of this bankruptcy bill. Single mothers are 50 percent more likely than married people to go bankrupt and three times more likely than childless people to go bankrupt. That statistic tells a great deal about the reality of why people are in bankruptcy.

The proponents of this bill argue that people file for bankruptcy because they are spendthrifts looking to escape their financial obligations. But this stereotype is terribly wrong. The bankruptcy courts are filled with the cases of hard-working people who were pushed over the financial brink because of a family health crisis, a lost job, or a failure to receive child support. These are the people this bill would turn the screws on, looking to squeeze out a few more dollars for the credit card companies.

The amendment focuses on this last group, on single parents trying to raise their children without the financial support they were supposed to receive from the absent parent. It would exempt from the onerous means test a single parent who failed to receive child support or spousal support that she was entitled to receive pursuant to a valid court order totaling more than 35 percent of her household income within a 12-month period. No wonder such a person ended up in bankruptcy. She was never paid more than a third of the income she expected over an entire year to help raise her children, to provide for their basic needs and well-being. Under those circumstances, she had no choice but to fall back on borrowing to support her family. She was not irresponsible. What she did was unavoidable.

Few people realize the magnitude of this problem. In 2004, $95 billion in child support—$95 billion—was uncollected. Failure to receive that child

support put millions of single-parent families in a deep financial hole through no fault of their own, and it is the children who suffer the most in these situations. Why on earth would we want to make things even more difficult for these families? Most single moms have to struggle to make ends meet. They are working in low-wage jobs without good benefits. Over three quarters, 78 percent, of them are concentrated in four typically low-wage occupational categories. When the economy is tough, they are often the first ones let go.

The poverty rate for single moms is nearly 40 percent as compared to 19 percent for single fathers. It is no wonder that single mothers are now more likely to go bankrupt than any other demographic group—more than the elderly, more than divorced men or married couples, more than minorities or people living in poor neighborhoods. Yet this legislation would deny traditional bankruptcy relief to many single-parent families who never received the child support they were owed. Instead, they would have to keep paying those credit card bills for another 5 years. Is that fair? I can't believe that a majority of my Senate colleagues think it is.

I am asking them to extend a little compassion to these single mothers struggling to raise their children.

The following women's and children's organizations continue to oppose this bill: The National Women's Law Center, the National Partnership for Women and Families, National Organization for Women, Parents for Children, YWCA, Business and Professional Women, the Children's Defense Fund, Voices for America's Children. They do so because of the particularly harsh provisions of this bankruptcy bill and the heavy weight it puts upon women generally and most particularly on innocent women who are being denied child support and alimony and because they, through no fault of their own, run into this kind of a financial crisis. This legislation will impose harsh provisions upon them, and they will be treated not just in bankruptcy but they will be treated with the harsh provisions that will effectively put them in indentured servitude for the next 5 years.

The National Women's Law Center, in writing to urge opposition to S. 256, says it is harsh on economically vulnerable women and their families. They point out that the bill would inflict additional hardship on over 1 million economically vulnerable women and families who are affected by the bankruptcy system each year—1 million women, the majority of whose only problem is that their husbands have failed to provide alimony and child support. And we are going to wrap them in with the spendthrifts who run amok with their credit. These are innocent individuals. We are saying that the harsher provisions of this bankruptcy law—that is going to indenture these women for 5 years; they can get judgments against them for 5 years—will exist for these families, women forced into bankruptcy because of family breakups, factors which account for 9 out of the 10 filings of women who are owed child and spousal support by men who file for bankruptcy.

It is going to be more difficult for the women to even get the alimony from their husbands who may be in bankruptcy but needing to owe alimony to their wives, because the husbands are going to be subjected to the provisions in this legislation and that is going to make the wife compete with the credit card companies. So that is going to be another burden which these individuals are going to have to face.

I hope we can find some support for this amendment because we are talking about perhaps among the most innocent group of people who will be caught in this. We have talked about single moms. We have talked about the National Guard and Reserve. We have talked about those who have been hit by the medical bankruptcy. All, through really no fault of their own or very little fault of their own, are going to be facing a very harsh future.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 69

Mr. KENNEDY. Mr. President, next I will address amendment No. 69, which I believe is pending.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, one of the extraordinary phenomenons we are facing at this time is the outsourcing of American jobs, the movement of American manufacturing jobs out of this country—by and large to the Far East but to other countries—and the growth of what we call ''temps''—companies that provide temporary workers. Those temporary workers have few, if any, benefits. So, obviously, when they run into challenging health crises and more limited incomes, they are facing the dangers of bankruptcy.

That is why I am offering this amendment—to ensure that workers who have lost their jobs or who have an illness or injury that prevents them from working are not unfairly thrown into the harsh means test created by this bill. This means test puts additional burdens on the debtors already trying to get their lives and finances back together after a difficult period.

The means test applies to those debtors whose average income for the 6-month period prior to filing bankruptcy is above the median income. Some debtors forced to file for bankruptcy because they lost their jobs are already exempt because they had no income in the last 6 months, but those who lose their jobs within 6 months before the filing for bankruptcy can be fairly included in the means test based on income they are no longer earning. My amendment would correct this problem. It provides that income from any job in which the debtor is no longer employed and income from any activity in which he can no longer engage due to a medical disability will be excluded from this calculation.

Mr. President, if we look at what has been happening in the economy, particularly to those individuals who are unemployed, many of them have been looking for employment for some period of time. If we look at the numbers of unemployed workers in January 2001, it was 6 million. In February 2005, it is 8 million. We are in a period where those who are unemployed are unemployed for a longer period than at any time in recent history.

This chart shows what happens in recoveries. The recoveries before 1991—the increase in terms of the employment and recoveries beginning in 1991 are here, and our current recovery shows that it is very light in terms of the total number of jobs that are created.

This is one of the important charts, Mr. President. This has 8 million Americans competing for 3.4 million jobs. That is the economic condition for workers in this country: 8 million people are looking for 3.4 million jobs. Obviously, there are going to be many millions of Americans who are not going to be able to get those jobs. When they can't get the jobs, they don't have the unemployment compensation, and they are unable to provide for their families, what happens? They end up in bankruptcy.

We are trying to say that for those individuals—by and large individuals who have lost their jobs because of outsourcing—the best projection is that we are going to lose 3.4 million jobs; 3.4 million jobs are at risk of being shipped overseas. 540,000 jobs in 2004; 830,000 in 2005; 1.7 million in 2010; and 3.4 million in 2015. Basically, when the manufacturing jobs go overseas, individuals lose their income, or if they are able to get some income, it is as a part-time worker with no health coverage. Their income goes down dramatically. What happens to those individuals? They end up in bankruptcy through no fault of their own. These are Americans who want to work.

From 2001, we have seen 2.8 million manufacturing jobs lost; 2.8 million jobs were lost. These are the jobs with good benefits, good wages, the jobs that are the backbone of America. When you take 2.8 million of these jobs out of the market and you have 8 million people chasing 3.4 million jobs, we know there are going to be millions of American workers who are going to find increasing pressure in providing for their families. That is what is happening today.

What we are saying is, if these workers are going to be forced into bankruptcy because they have lost their jobs, they are not going to have to fall into the cruelest part of the bankruptcy. That is all we are saying. We have done this. I have been here when we had our trade adjustment assistance. We said some industries were adversely affected because of imports. We provided some consideration for those workers. We are finding out now that we are losing hundreds of thousands and millions of jobs that are being moved overseas. The result is that many of these individuals are unable to have the kind of income they need, and they are forced into bankruptcy. When they are forced into bankruptcy, we are saying that they don't go into chapter 13; they go in and meet their responsibilities and get a fresh start. They don't go into a chapter 13, which will force them to continue to pay for 5 years.

If you look at this chart, you will see that 49 of the 50 States have lost manufacturing jobs. So this reaches the whole dimension of this legislation because this legislation is national. This particular challenge is national. There is obviously a great deal more focus on this in the industrial heartland, in New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, and many of those States, and even in Massachusetts we have lost 83,000 manufacturing jobs. There are plenty of other jobs, such as in North Carolina where they lost 163,000 jobs.

So we have to ask ourselves, what happens to these individuals? We know what happens to them. We know that if they can get a job, they are going to be paid a good deal less. If they cannot, they will run out of unemployment compensation. We are not providing extended unemployment compensation, and we know that the final catch is that in this economy, the health insurance is up, college tuition is up, housing is up, and gas is up. It is forcing these individuals into bankruptcy.

All we are saying for those individuals who have lost their jobs—jobs that have gone overseas, lost manufacturing jobs—and are unable to get those jobs and are forced into bankruptcy, that they will not have the harshest provisions of bankruptcy directed upon them. We ought to show some consideration to them. These are not spendthrifts, Mr. President. These are hardworking Americans who, 5 years ago, would not be facing this particular challenge, and now they are. We ought to at least give them some consideration.

Mr. President, I think I have until 2:45.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, we in the Senate were elected to serve the people. It is our solemn duty to fight for the American people every single day, for the values they share and the priorities they care about most. Above all else, the American people expect us to stand for fairness, freedom, and opportunity. Those values are the cornerstone of the American dream. We believe that if you live right and work hard, you should be able to care for your family. You should be able to afford a comfortable home in a safe neighborhood. You should be able to put your children through school and in college. You should have time to spend with your family, practice your faith, and contribute to your community.

We also believe that when life throws you an unexpected setback, you can count on your neighbors to pitch in. If you lose your job or you fall seriously ill, we all want to help out. You should be given a second chance to pick yourself up, dust yourself off, work hard, and reclaim the American dream for you and your family. That is the American way. That is the American spirit. That is what our bankruptcy courts should be about: giving average Americans who have lived responsibly a second chance.

This bill before us turns the American dream into the American nightmare. This bankruptcy bill turns its back on our most basic values as Americans. It is not a bill of the people, by the people, or for the people. It is a bill of the credit card companies, written by the credit card companies, and for the credit card companies, and it has no place in America.

This bill is about greed. It is about the most profitable corporations in America—the credit card companies—using the Senate to enhance their profits, even more by shaking down hard-pressed Americans in bankruptcy court. It stacks the deck in favor of the credit card companies and against American families who do everything right but find themselves in bankruptcy because they lose a job, fall ill with cancer, or get divorced.

I am reminded of the words of Leviticus in the 25th chapter. It reads:

> If one of your brethren becomes poor, and falls into poverty among you, then you shall help him, like a stranger or sojourner, that he may live with you. Take no usury or interest from him; but fear your God, that your brother may live with you.
>
> You shall not lend him your money for usury, nor lend him your food at a profit.

But this bill ignores those words. It allows the credit card companies that charge outrageous interest rates, exorbitant fees, and force you into bankruptcy to still win back almost every dime in bankruptcy court against Americans who have fallen on hard times. This pillaging of the middle class must come to an end.

Today we will pass a bankruptcy bill that rewards the credit card companies at the expense of average Americans. Last month, we passed a class action bill that makes it harder for average Americans to hold big corporations accountable, and we have a President who wants to give your Social Security away to Wall Street.

Credit card companies, big corporations, Wall Street—when is this President and this Republican Congress finally going to give the American people just 1 minute to debate their issues? When are we going to make their health care more affordable so they do not have to worry every night if one of their children gets sick? When are we going to make college more affordable so parents can proudly send their children to college to build their own futures? When are we going to fight for clean water and clean air so we can raise our families in health? When are we going to compete for good jobs, not by lowering the pay but by raising our skills in the global economy? When are we going to fight for a secure retirement for Americans who have lived responsibly and worked hard all of their lives? When is the Senate finally going to stand up and fight for the American people?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, I rise to encourage my colleagues to support two amendments that seek to provide some protections to families who face the devastation of medical bankruptcy.

I thank Senator KENNEDY for offering these amendments that I am proud to be a cosponsor of. The first would exempt from the means test debtors whose severe medical expenses have caused their financial hardship and forced them to file for bankruptcy, and the second would provide a homestead exemption to medically distressed debtors of $150,000 in equity in their primary residence.

These amendments are critical and will help ensure that families do not have to declare bankruptcy and lose their homes just because they get sick.

Medical bankruptcy has skyrocketed in recent decades. In 1981, only 8 percent of personal bankruptcy filings were due to a serious medical problem. In contrast, a recent study by researchers from Harvard Law School and Harvard Medical School found that half of personal bankruptcies filed in this country are now due to medical expenses. And what is most astonishing about this is that three-quarters of the medically-bankrupt had health insurance at the onset of their illness.

This means that each year, 2 million families endure the double disaster of illness and bankruptcy. In my State of New York, more than 38,000 of the almost 77,000 personal bankruptcies in 2004 were caused by medical expenses, impacting more than 100,000 New Yorkers.

On average, those bankrupted by medical expenses are middle-class

Americans with children who owned their own homes, held jobs, and have completed some college education. Medical debtors are typical Americans who got sick. Their out-of-pocket costs, starting from the onset of illness, averaged almost $12,000, and in the year leading up to bankruptcy their out-of-pocket expenses averaged more than $3,500.

These are families who desperately tried to avoid bankruptcy: more than 20 percent reported going without food; more than 30 percent had a utility shut off, more than 50 percent reported skipping needed doctor visits; and more than 40 percent failed to fill prescriptions in the 2 years leading up to their A bankruptcy filing.

The Harvard study also found that those driven into bankruptcy by medical expenses differ in an important way from other filers: they were more likely to have experienced a lapse in health coverage leading up to their bankruptcy filing. In fact, a lapse in health coverage at some point in the 2 years before filing was a strong predictor of bankruptcy, with almost 40 percent of medical debtors experiencing a lapse in coverage, compared to 27 percent of other filers.

For those bankrupt by medical costs, illness caused financial hardship not just because of medical expenses, but also because the illness forced them to work less or lose their employment entirely. In fact, 35 percent had to work less because of illness, and in many cases to care for someone else. And it is likely reduced work and even the loss of a job because of medical problems that resulted in a lapse in healthcare coverage.

It's easy to see how the face of medical bankruptcy is the typical American worker. An unexpected illness or accident leaves you unable to work or unable to maintain your job full-time, which in turn leaves you with less income to pay your medical expenses. Over time your access to care is diminished because you can't afford the cost-sharing, are not seeking needed care to avoid expenses, or have lost coverage because of reduced work hours or job loss, and ultimately your health insurance coverage lapses. Now you have no assistance with medical expenses and little or no income to pay the bills. It's a vicious cycle. And all because you or a member of your family got sick.

Unfortunately, rapidly rising health care costs will only exacerbate this problem going forward. The number of Americans spending more than a quarter of their income on medical costs climbed from 11.6 million in 2000 to 14.3 million in 2004. And the pressure on employers to reduce benefits and increase cost-sharing as a result of rising health costs is no less.

The solution to this problem is not to punish hard working men and women who on a different day, with different luck, wouldn't be just a typical American who got sick. These Americans are already confronting difficulties because of circumstances beyond their control. Let's not make their situations even worse. We need to adopt these amendments and begin the hard work of addressing the causes of medical bankruptcy and the serious problems that face this nation's health care system.

Again, I thank Senator KENNEDY for his work on these amendments and urge their adoption.

AMENDMENT NO. 67

Mr. DODD. Mr. President, this amendment was going to be voted on, actually, earlier this morning, but there was a reason to delay it until this afternoon. I ask unanimous consent to have 1 minute to explain the amendment.

The PRESIDING OFFICER. Under the previous order, the question will be on amendment No. 67, offered by the Senator from Connecticut, Mr. DODD. Without objection, the Senator will be recognized for 1 minute.

Mr. DODD. Mr. President, this amendment is simple and straightforward. More than 1 million women in the coming year will file bankruptcy. The overwhelming majority of these women are mothers of young children. This amendment is designed to see to it that the needs of children will be met as persons go through the bankruptcy act. The credit card companies certainly have a right to receive what resources are due them, but they should not be able to trump the needs of children.

Too often in this bill, in a variety of places, that is exactly what happens. My colleague from Utah said this bill has been 8 years in the making. It would only take a couple of minutes here to try to redress some of the inequities that exist when it comes to questions of providing for the basic needs of children—educational needs, utilizing child support, the earned-income tax credit, the child tax credit, and alimony to support the needs of children.

For over 100 years, since 1903, women and children have come first in our Nation's bankruptcy laws. This will be the very first time, without this amendment being adopted, that children and families will take a backseat to the credit card industry. That is a wrong priority for our Nation.

Every major child advocacy group in this country supports this amendment. I urge my colleagues to support it. This is one exception we ought to make to get right the balance in this bill of the needs of the credit card companies with the needs of America's children and families. I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 67, offered by the Senator from Connecticut, Mr. DODD, on which the yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

The PRESIDING OFFICER (Mr. MARTINEZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 34 Leg.]

YEAS—42

Akaka	Feingold	Lincoln
Baucus	Feinstein	Mikulski
Bayh	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Jeffords	Obama
Byrd	Johnson	Pryor
Cantwell	Kennedy	Reed
Clinton	Kerry	Reid
Conrad	Kohl	Rockefeller
Corzine	Landrieu	Salazar
Dayton	Lautenberg	Sarbanes
Dodd	Leahy	Schumer
Dorgan	Levin	Stabenow
Durbin	Lieberman	Wyden

NAYS—58

Alexander	DeMint	McConnell
Allard	DeWine	Murkowski
Allen	Dole	Nelson (NE)
Bennett	Domenici	Roberts
Biden	Ensign	Santorum
Bond	Enzi	Sessions
Brownback	Frist	Shelby
Bunning	Graham	Smith
Burns	Grassley	Snowe
Burr	Gregg	Specter
Carper	Hagel	Stevens
Chafee	Hatch	Sununu
Chambliss	Hutchison	Talent
Coburn	Inhofe	Thomas
Cochran	Isakson	Thune
Coleman	Kyl	Vitter
Collins	Lott	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	
Crapo	McCain	

The amendment (No. 67) was rejected.

AMENDMENT NO. 68

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, do we have an minute on each side?

The PRESIDING OFFICER. Further time requires unanimous consent.

Mr. KENNEDY. I ask unanimous consent for a minute on each side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. First of all, I want to pay tribute to my friend and colleague, Senator KOHL, who has worked on this issue for many, many years. This amendment closes one of the gaping loopholes in this bill, but it is a loophole millions of dollars wide and millions of dollars deep.

Right now, because a few States have no limit on homestead, the Ken Lays, the Jeff Schillings, and the Dennis Kozlowskis in this world can hide millions of dollars or tens of millions of dollars of their assets from their creditors even after they go into bankruptcy. There isn't much fairness or balance in the bill so far, but this amendment will put a very small measure of balance in the bill by limiting the homestead exemption nationwide to $300,000.

I ask my colleagues to vote for balance and fairness, and agree to this amendment.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, this bill is all about fairness and balance. This bill, as I introduced it minus the

Schumer amendment, is exactly the bill that Democratic leaders of the Judiciary Committee signed off on in the summer of 2002 when they controlled the U.S. Senate. I don't know how much more compromise you can get than that. But this amendment would gut one of the major compromises of this legislation that has evolved over that period of time going back to August 2002.

The bill's homestead compromise that we have would create a Federal cap of $125,000 on the homestead exemption, but would allow those States with higher or unlimited exemptions to take advantage of them as long as they comply with the 2-year residency requirements and a 10-year fraud reachback provision.

The bill's compromise is a good one that all parties have signed off on. The Kennedy amendment would gut it.

I ask you to kill this amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 53, as follows:

[Rollcall Vote No. 35 Leg.]

YEAS—47

Akaka	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Obama
Boxer	Harkin	Pryor
Byrd	Inouye	Reed
Cantwell	Jeffords	Reid
Carper	Johnson	Rockefeller
Chafee	Kennedy	Salazar
Clinton	Kerry	Sarbanes
Collins	Kohl	Schumer
Conrad	Landrieu	Snowe
Corzine	Lautenberg	Specter
Dayton	Leahy	Stabenow
DeWine	Levin	Wyden
Dodd	Lieberman	

NAYS—53

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bennett	Frist	Roberts
Bond	Graham	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Burr	Hatch	Stevens
Chambliss	Hutchison	Sununu
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

The amendment (No. 68) was rejected.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, this bankruptcy reform bill before the Senate, S. 256, is a 500-page bill, which has been the dream of the credit card industry, banks, and financial institutions across America for almost 10 years. What they are trying to do in this bill is make it more difficult for someone to have their debts discharged in bankruptcy.

Now, of course, everyone understands our legal and moral obligation to pay our debts. But we recognized a long time ago that some people get into a situation where they are swamped with debt and cannot get out from under it. In the old days, they were relegated to debtors' prisons; they literally imprisoned them. In more civilized times, the decision was made to have a civil court procedure, where you could go in and have your debts released, surrendering virtually all of your assets to start over. That is happening in America today. About 1.3 million Americans go into bankruptcy court for personal bankruptcies.

The credit card industry and the banks say too many people are getting their debts discharged. So we are going to set up a new process in the bankruptcy court where we are going to ask more questions than ever and try to determine whether the person filing for bankruptcy could conceivably pay back, over the next 10 years, $165 a month. And if they can pay back $165 a month, we will not discharge their debts. They will end up walking out of court with the same debt they carried in, in most cases.

Now, for a lot of people, you would say, if you can pay back something, you ought to pay it back. But for many people, it means the debts they have incurred that they cannot pay back will be dogging them and burdening them for the rest of their natural lives. So many of us have said when you take a look at this bill, at least be sensitive to some people who go into bankruptcy court through no fault of their own.

Senator KENNEDY talked about people with medical bills, because of a medical crisis in their family. A woman goes to the doctor with a lump on her breast, and a mammogram shows it is breast cancer. She goes through extensive radiation, chemotherapy, all sorts of recovery time; she cannot go back to work, and the bills mount up sky high and complications ensue. That is nothing that she has done wrong. There is no moral failure there. If her health insurance is not good, she is left in a position where she can never, ever pay back the bills. That is not a person who should be put through a more rigorous procedure in a bankruptcy court.

Senator KENNEDY said that if you don't do anything else for that poor woman and her family, at least say at the end of the bankruptcy court hearing she will still have a home, a roof over her head. So we asked for a $150,000 homestead exemption so that a person could at least have a modest home to return to after bankruptcy from a medical illness. That amendment was rejected. Everybody on the other side of the aisle voted against it.

I offered an amendment and said, what about the men and women in uniform today, the Guard and Reserve who are being activated. They joined thinking: once a year I may have to serve my State, my country for a month or so. Now we are calling them into battle for a year, a year and a half, and no end is in sight.

What if you were a member of the Guard? You have sworn to protect this Nation. You are called into combat and leave behind your family and your business. And what if the business fails because you are gone? What if you are forced into bankruptcy? Could we not at least include language in this bill to give special consideration to the men and women in uniform who are answering their Nation's call and may face bankruptcy? I lost that amendment 58 to 38. Not a single Republican would vote in favor of that amendment.

The last amendment I am going to offer, much to the relief of my Republican colleagues, is one which asks my friends on the other side to take one last look at this issue. Instead of applying that special treatment or giving some help to all soldiers, guardsmen, and reservists who serve and may lose a business or go into family bankruptcy because they are overseas for America, I ask my colleagues on the other side of the aisle to consider this: How about disabled veterans whose indebtedness occurred primarily while they were serving America?

I have met some of these veterans at Walter Reed Hospital. They have lost limbs. They face terrible injuries. If they face a bankruptcy that occurred because of debts that happened while they were in service to our country, should we not give these disabled veterans a fighting chance in bankruptcy court? Should we not spare them the hurdles, obstacles, paperwork, and legal bills that the credit card industry is demanding for people who go to bankruptcy court? This exemption will especially help recently disabled veterans who, in addition to their physical loss, have terrible financial difficulties.

The bankruptcy bill makes petitions for debt relief under chapter 7 subject to a means test. I had a chart before. It is a long chart. Not only do you have to file all the documents to go into bankruptcy court, but this new 500-page bill lays it on you again and makes you file another ton of documents to see if maybe you could pay back $150 or $175 a month over the next 10 years.

So I am giving relief to disabled veterans. I am not going to apologize for that. A lot of us get up on the floor and praise them for what they have done.

We should. For goodness' sake, they are protecting us, our families, and our homes. Is it too much to ask that we give them a break in this harsh bankruptcy bill from the worst part?

The amendment specifies the exemption applies only if ''the debtor is a disabled veteran and the indebtedness occurred primarily'' while they were on active duty. To qualify for this exemption, a disabled veteran must have incurred most of their indebtedness—more than 50 percent of their indebtedness—while on duty.

The Disabled Veterans of America estimates there are 2.3 million disabled veterans. According to the Department of Veterans Affairs' annual report, the average disabled veteran receives only $7,861 in disability compensation each year. That is not a lot on which to live. Sadly, this amount varies widely. Veterans in some States do much better than veterans in others. Unfortunately, my home State falls into the ''others.'' We receive less than half on average of disability payments paid in other States.

In considering whether to support this amendment, I invite my colleagues to reflect for a moment on the physical and financial situations some of our disabled veterans face. Their hardships today, combined with their earlier service, make them twice heroes, in my book. If any group of people deserves some relief from this burdensome process, it is America's disabled veterans who suffered physical and financial devastation while they were wearing a military uniform and risking their lives for America.

I invite all my colleagues from both sides of the aisle to join me in cosponsoring this amendment and make this rather small but I think deeply worthwhile adjustment to the bankruptcy bill.

It is my understanding that Senator LEAHY will be coming to the floor momentarily, unless Senator GRASSLEY seeks recognition at this point.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, this would be a good opportunity for us to consider the general environment and the reason for this legislation.

First of all, there has not been any major rewrite of the bankruptcy legislation for more than 25 years. During that period of time, there has been a dramatic change in the economy, particularly the globalization of the economy. It has brought about reasons for changing parts of the Bankruptcy Code.

We have gone from around 300,000 bankruptcies a year to a high of 1.6 million or 1.7 million bankruptcies a year. So there has been an explosion of bankruptcies. Even in the best of times there has been an explosion of bankruptcies. It has become an economic problem where the average person in America is paying an additional $550 for goods and services because somebody else did not pay their bills.

All of these things have brought about reasons for changing the Bankruptcy Code. This legislation that is 500 pages that has been referred to is not something that just has been dropped on the Congress of the United States.

First of all, at least 10 years ago, the Judiciary Committee set up a commission of experts in bankruptcy, not made up of Members of Congress, a commission of people from the private sector and from academia to study what needed to be done with the bankruptcy laws to bring them up to date with the global economy, to bring them up to date with the changes in our domestic economy, and to look at the problem of so many people filing for bankruptcy.

This commission worked several months—more than a year—to produce a product. That was the basis for the introduction of legislation in 1997. In that period of time, this bill has passed the Senate in several different Congresses and has passed the House in several different Congresses, has been worked out in conference, an agreement between the House and Senate in several different Congresses, one of those even reaching President Clinton for his signature. But it was the end of the year, and he pocket-vetoed it. We did not have a chance to reconsider that veto.

The legislation before us, as I have introduced it, and basically the legislation that is before the Senate is legislation that has been so compromised, except for the Schumer amendment—and I will not go into what the Schumer amendment is—but except for that amendment, the bill we introduced and maybe four or five technical changes that were accepted in the Judiciary Committee is the legislation that was signed off on by Democrats who had a majority in the conference committee in the year 2002 when the Democrats controlled the Senate.

Is that exactly the way that I would write this legislation? No, it is not. There are a lot of provisions in this bill I would like to be different. But in the Congress of the United States as a whole—and particularly in the Senate where there is no limit on debate, where filibusters are possible, where the minority has rights they should have, and the only place minority rights are protected—you have to reach compromises.

I know no better compromise that I could put before the Senate than the wording of a compromise that was worked out between a Republican House and a Democratic-controlled Senate in the year 2002. That is what we have before us.

There are probably a lot of people who do not want any bankruptcy reform, but they will probably end up voting for it because this bill in different Congresses has passed by a margin of 97 to 1 on one occasion. The last time it passed the Senate, I think the vote was 85 to 12.

I think all of this is evidence of a bipartisan agreement that the bankruptcy laws need to be reformed. I do not know what more evidence I can give the American people of the way our political system works, the way the Congress works, to arrive at compromise, than the compromise that I lay before the Senate.

We recently heard from my good friend, the Senator from Illinois, the Democratic whip, that there have been many opportunities to help this group of people or that group of people or another group of people. We refer to that sort of helping this group or that group or another group as a carve-out.

My colleagues have seen amendment after amendment that was introduced to do that. We defeated that, because there ought to be uniformity of application of law across the United States, not separating something special for this group or that group or another group when it comes to justice in the bankruptcy courts. And if we added all of that up, we might not have a lot of people left who are going to be affected by what a bankruptcy judge is supposed to decide, which is justice between creditors and debtors.

In this legislation, we preserve one of the main goals of bankruptcy for the last 100 or more years, and that is the principle of a fresh start, where somebody is going to bankruptcy because they have problems that they cannot deal with, financial problems, natural disaster, divorce, medical, whatever it takes to get into financial trouble, that might not be any fault of one's own.

To make it clear that we are not after people who do not have an opportunity—when people are below the median income of their State, they are practically guaranteed a fresh start under this legislation, and if people are above the median income for their State, there is a simple process called a means test, where one puts down all of their income and assets and what they owe and through that makes a determination of whether they have the ability to repay some of their debt.

My friend from Illinois mentioned the figure of $150 or $175 that maybe over the next 10 years one would have to pay. If people have the ability to repay some of their debt, should they not have to repay some of their debt? It seems to me to be fair to those people to whom they do pay their debt.

So we preserve the principle of a fresh start, but we also establish a principle that if one has the ability to repay some their debt, they are not going to get off scot-free.

It is just not those two principles that ought to be looked at to understand whether Congress might be doing the right thing. I am not saying just an overwhelming vote in support of legislation is the only way that one ought to judge whether that legislation is justified, but surely the extent to which things are more bipartisan in the way they are done in this body

ought to be some justification that certain tests of justice and fairness are being done or they would not get that kind of support, because I do not know a single Senator who for the most part is not concerned about doing right for the people of his State.

So that is the sort of consideration I hope the people of this country will give to this legislation, the need for it, the justification for it, the fairness of it, and most importantly those two principles of a fresh start for those who deserve it and the principle that if one has the ability to repay some of their debt that they are not going to get off scot-free.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 83

Mr. LEAHY. Mr. President, am I correct that amendment No. 83 is pending?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Mr. President, I ask unanimous consent that Senator WARNER, the senior Senator from Virginia, be added as a cosponsor to amendment No. 83.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I am joined by friends and colleagues, the senior Senator from Maryland, Mr. SARBANES, and the senior Senator from Virginia, Mr. WARNER, in offering a bipartisan amendment that will moderately preserve the current conflict-of-interest standards for investment banks. We are doing this to safeguard the integrity of the bankruptcy process.

Section 414 of the underlying bill would severely weaken the disinterested persons rule. That was an important conflict-of-interest standard. It has actually been part of the Bankruptcy Code since 1938. It has been there before I was born. We believe that the standard embodied in current law is critical to protecting the interests of investors and the public.

So our bipartisan amendment is a modest compromise. It limits the conflict-of-interest prohibition, not a total exclusion but just 5 years prior to the filing of the bankruptcy petition. In other words, a prohibition which has been the bankruptcy law forever would now be cut back just to apply in the 5 years immediately preceding the bankruptcy. I think it is a reasonable compromise.

The current disinterested persons standards are intended to ensure that professionals who advise a company in bankruptcy have no conflicts of interest, are neutral, and when we consider how huge some of these bankruptcy have been, Enron and others, we want somebody without a conflict of interest; we want somebody who can be neutral.

Since bankruptcy proceedings involve reexamining prior transactions, an investment bank that underwrote those prior transactions could not be expected to act as a neutral, disinterested party. It is almost like saying, I wrote these transactions when you went into this multimillion or multibillion-dollar bankruptcy but do not worry, I will now be the disinterested party to advise you where we go now.

I think the reason we have the current standard, the reason it has worked well for nearly 7 decades, is because it has helped maintain public confidence in the bankruptcy system.

Section 414 of the bill before us eliminates the current conflict-of-interest standard. It is a standard that prohibits investment banks that have had a close financial relationship with the debtor from playing a major role in the bankruptcy process.

I have talked to a lot of people who are far more knowledgeable on this than I, and they tell me you cannot expect that an investment bank that served as an underwriter of a bankrupt company's securities would then provide an independent assessment of that underwriting as an adviser in the bankruptcy of the company. In other words, you want to find somebody who can give you an independent, neutral assessment in bankruptcy of the underwriting. You don't go to the person who did the underwriting. Of course, they are going to say: Great job. Man, that person did a great job, whoever it was—oh, that was me? Boy, I did a great job.

The investors, especially in these huge bankruptcies, the pensioners who have suffered financial damage through the bankruptcy, deserve neutrality. They don't deserve somebody where it looks as if it is such a cozy deal there is no way they are going to recover.

If the bill is passed in its current form, the investment banks that advised or underwrote securities for companies such as Enron or WorldCom prior to bankruptcy, having advised or underwritten those securities, could then be hired to represent the interests of the defrauded creditors during the bankruptcy proceeding. Just think of this. The people who were involved in putting the creditors and the investors and the people whose pension money was in there, the people who were involved putting all their money at risk, can now be hired to represent their interest.

There is a blatant conflict of interest and that is why it has been forbidden for seven decades. Firms that had a part in those companies could then end up staying on the payroll in bankruptcy and they could make huge profits, sometimes from their own fraud.

What kind of message are we sending to those everyday Americans who invested for their kids' college or their own pensions, who suffered as a result of corporate misdeeds, if we then say that is OK, now we are going to give a whole lot of money to the people who set this mistake up in the first place?

We talked to the National Bankruptcy Review Commission. They strongly recommended that Congress keep the current conflict-of-interest standards in place. Actually, in their report they concluded:

> Strict disinterestedness standards are necessary because of the unique pressures inherent in the bankruptcy process.

These are the people who understand this better than anybody in this Chamber.

Supporters of the underlying bill have voiced their opposition to the inclusion of section 414. I wish they would listen to what a member of the Fifth Circuit Court of Appeals said, Judge Edith Jones. She is a member of the commission. She asked us to remove section 414. She said:

> If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. . . .
>
> Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation and . . . it should be eliminated.

Again, if you have a bankruptcy of a WorldCom, an Enron, something like that, and you have all these people with the pension money in it, the kids' college funds in there, their business in there, their own retirement in there, you cannot then turn around and say we are going to let the same people decide what happens to you in bankruptcy as the people who did the things that put us into bankruptcy in the first place.

William Donaldson is the Chairman of the Securities and Exchange Commission. He wrote to us to express the opposition of the SEC to section 414 of the bill. He said:

> [We] believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

Keep that in mind. It does something further. Not only do we end up hurting the people who have to rely on the bankruptcy court being honestly run, but he also wants to keep up investor confidence. He was joined in that position by his predecessor Arthur Levitt, and by a number of nationally renowned experts. National consumer organizations have written to us to warn of the danger of weakening conflict-of-interest controls, as this bill would allow:

> If the participants in Enron's earlier financial dealings had managed the investigation, it is quite legitimate to wonder how many of these financial misdeeds would have come to light in the first place. Without existing conflict-of-interest prohibitions in place, it is possible that some of the same firms that have come under investigation by the SEC for illegal activities in the current corporate scandals might very well have been allowed to serve as ''objective'' advisers in this and other bankruptcy proceedings.

I ask unanimous consent a letter from the Consumer Federation of America, the Consumers Union, Consumer Action, U.S. Public Interest Research Group, and the National Consumer Law Center be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 3, 2005.

Hon. PATRICK J. LEAHY
Ranking Member, Senate Judiciary Committee, Washington, DC.
Hon. PAUL S. SARBANES
Ranking Member, Senate Banking, Housing and Urban Affairs Committee, Washington, DC.

DEAR SENATORS LEAHY AND SARBANES: The undersigned national consumer organizations strongly support your amendment to strike a little noticed provision of pending bankruptcy legislation (S. 256) that would weaken current conflict-of-interest standards in the bankruptcy code. This provision would, for the first time, allow investment bankers to offer advice in bankruptcy restructuring cases about companies with which they have had a close financial relationship prior to bankruptcy. As advocates for small investors, we applaud you for moving to eliminate this significant threat to the interests of investors, employees and pensioners.

Section 414 of pending bankruptcy legislation would loosen the current standard for ''disinterested'' parties that are allowed to advise bankruptcy management or trustees as they attempt to restructure debtor companies in a manner that is fair to investors and other creditors. Of the several parties that are automatically banned from offering advice because of obvious conflicts of interest, Section 414 removes only one: investment banking firms. This means that the same firms that underwrote and sold stocks and bonds for a bankrupt company—firms that in some cases may have participated in structured finance deals with the company or otherwise played a significant role in financial decisions that helped to land the company in bankruptcy—could now be allowed to offer restructuring advice to the management or trustee responsible for maintaining impartiality and representing the interests of creditors.

Corporate bankruptcy experts tell us that reexamining the financial transactions that led to bankruptcy is one of the most significant responsibilities of the post-bankruptcy management (often called debtor-in-possession, or DIP, charged with the duties of a trustee to protect all creditors and investors.) This review includes determining what role, if any, that outside advisers and financial partners played in bringing about a company's downfall. Another of DIP management's most important responsibilities is determining the best source of financing for any restructuring. An investment banking firm has obvious conflicts in both roles and is very unlikely to be an advocate for review of its own previous work or the deals in which it participated. It is quite possible, for example, that an investment banker would discourage bankruptcy management or trustees from pursuing legal claims against the banking firm for illegal activities of that firm that contributed to the bankruptcy. The landmark settlement with the leading investment banks over their stock research practices shows just how poorly these firms have handled comparable conflicts in the past.

Imagine how the public would have reacted if the investment banks that were later found to have profited enormously from structured finance deals with Enron had been hired to offer advice in the Enron bankruptcy. Indeed, if the participants in Enron's earlier financial dealings had managed the investigation, it is quite legitimate to wonder how many of these financial misdeeds would have come to light in the first place. Without existing conflict-of-interest prohibitions in place, it is possible that some of the same firms that have come under investigation by the SEC for illegal activities in the current corporate scandals might very well have been allowed to serve as ''objective'' advisors in this and other bankruptcy proceedings. This scenario is possible because, as you know, it often takes months or longer to unravel the role of investment banking firms in such cases, particularly cases that do not receive the media and congressional scrutiny of an Enron or Worldcom collapse.

In response to these conflict-of-interest concerns, investment banking interests offer a familiar refrain. We can offer better advice, they say, because we are intimately aware of the distressed company's financial situation. This response is eerily similar to that offered by the accounting industry, as it loudly insisted that a conflict did not exist when accountants served as both internal and external auditors or received lucrative consulting contracts from the same companies that they audited. But, if there is one lesson we should have learned from the recent corporate crime wave, it is that conflicts of interest matter. Investors paid dearly to learn that lesson. And the markets have paid through the loss of investor confidence.

Representatives of the securities industry have also contended that this provision will merely provide bankruptcy officials with the discretion to make a judgment about whether a particular investment firm should be involved in a bankruptcy case. But what if the details of an investment firm's involvement with a bankrupt firm do not come to light for months or longer, as was true in the Enron case? By that time, a lot of damage could already have been done to investor interests, and the credibility of the process would have been hopelessly undermined.

For example, the Wall Street Journal reported on May 14, 2003 that investment firm UBS Warburg, ''was far more involved in the inner workings of HealthSouth than previously disclosed and maintained an unusually close relationship with HealthSouth's embattled founder, Richard Scrushy.'' Yet, if Section 414 of the bankruptcy bill had been law, it is entirely possible that UBS Warburg could have been allowed to serve as ''objective'' advisors in the HealthSouth bankruptcy case.

Congress and the SEC have devoted considerable time and energy over the past few years to eliminating just these kind of conflicts in an effort to restore investor confidence. The SEC has made important strides, for example, in implementing the Sarbanes-Oxley corporate reform law and in cracking down on Wall Street conflicts of interest. More recently, the National Association of Securities Dealers (NASD) has been considering whether to place new limits on investment banking firms' ability to write fairness opinions for deals in which they are involved, since these firms could benefit financially if a merger or acquisition is approved. By allowing new financial conflicts, section 414 of S.256 runs completely contrary to this trend.

Investment firms that have previously advised a bankrupt company have a prima fascia conflict of interest and should continue to be automatically prohibited from offering advice in a bankruptcy restructuring case. We commend you for moving to eliminate the conflicts-of-interest that this bill would allow.

Sincerely,

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.
TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.
SUSANNA MONTEZEMOLO,
Policy Analyst, Consumers Union.
LINDA SHERRY,
Editorial Director, Consumer Action.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.
JOHN RAO,
Staff Attorney, National Consumer Law Center.

Mr. LEAHY. This is not the time to weaken conflict-of-interest standards. If we are doing anything, we ought to be strengthening conflict-of-interest standards. The provisions Senators SARBANES and WARNER and I seek to modify are fundamentally at odds with the work of the Congress and the SEC, fundamentally at odds with the work to restore public confidence in financial and corporate transactions. I thank them for offering this with me.

All we want to do is to make sure we increase the confidence and accountability in our public markets for millions of Americans whose economic security is threatened by corporate greed and not have the Senate put an imprimatur on the use of people with enormous conflicts of interest, especially when consumers are hurting so badly.

I see the senior Senator from Maryland. He is far more familiar with how these things have worked in these major corporations. He is the author of the Sarbanes-Oxley bill. I yield the floor to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the very able Senator from Vermont, the ranking member of the Judiciary Committee. I am pleased to join with him in offering an amendment to the Bankruptcy Act. This amendment addresses a provision in the bill that would drastically weaken the conflict-of-interest protections of the Bankruptcy Code in regard to investment banks.

Section 414 of this bill makes sweeping changes in the conflict-of-interest requirements of the bankruptcy process in regard to investment banks. These changes are opposed by the Securities and Exchange Commission, by such legal experts as Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, Dean Nancy Rapoport of the University of Houston Law Center. They were rejected by the National Bankruptcy Review Commission of 1997.

In my view, section 414, if allowed to stay in the legislation as it is now written, would significantly raise the risk of abuse and therefore I think it is imperative that we undertake to modify the provision in the legislation. I am pleased to join with my colleague in seeking to do so.

I ask unanimous consent to have printed in the RECORD the entire letter

from Chairman Donaldson, writing on behalf of the Securities and Exchange Commission to Senator LEAHY and myself in response to our letter asking for the views of the Commission.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 22, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.

Hon. PAUL S. SARBANES,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS LEAHY AND SARBANES: Thank you for requesting the Commission's views on Section 414 of H.R. 975, which would amend the ''disinterested person'' definition in the conflict of interest standards of the Bankruptcy Code to remove the specific provisions covering investment bankers. On May 7, in response to a question from Senator Sarbanes at a hearing of the Senate Committee on Banking Housing and Urban Affairs on the Impact of the Global Settlement, I expressed my personal views about this amendment. Now I am pleased to convey the view of the Commission, which is that, while it may be possible to draft language that would address some of the concerns of the proponents of the amendment, Congress should proceed very cautiously before loosening any conflicts of interest restriction. While we recognize that this one-size-fits-all statutory exclusion is controversial, we believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

The current ''disinterested person'' requirement was adopted at least in part in response to a 1938 study by the Securities and Exchange Commission that provided extensive documentation and analysis of abuses in corporate reorganizations. The study concluded that a firm that served as underwriter for a company's securities should not advise the company about distributions to those security holders in a reorganization plan. It further found that such a firm should not advise the company about potential claims against those involved with the company prior to the bankruptcy, since this often would involve an assessment of transactions in which the firm participated. However, we should note that in the 65 years since the 1938 study was issued, bankruptcy practices and procedures have improved significantly with the addition of a dedicated bankruptcy judicial system, the establishment of the U.S. Trustee's office, and the strengthening of active creditors' committees.

We are aware of the arguments of proponents of the amendment that the current statutory exclusion is too broad because it covers firms that participated in any underwriting of the debtor, even if it was years ago and the firm has had no further involvement with the debtor. However, if the exclusion is eliminated entirely, we are concerned that the general protection in the statute—which relies on the judge, at the outset of the proceedings, to forbid those with materially adverse interests to the estate, its creditors, or its equity security holders from advising a company in bankruptcy—may well be insufficient.

We appreciate the opportunity to comment on this proposed amendment. If you or your staff need any further information, please contact my office.

Sincerely,

WILLIAM H. DONALDSON,
Chairman.

Mr. SARBANES. The Chairman writes:

Now I am pleased to convey the view of the Commission, which is that, while it may be possible to draft language that would address some of the concerns of the proponents of the amendment, Congress should proceed very cautiously before loosening any conflict of interest restriction.

Chairman Donaldson, of course, noted the fragility of investor confidence and the need to be very careful in easing these conflict-of-interest provisions.

The existing provision in the law:

. . . was adopted at least in part in response to a 1938 study by the Securities and Exchange Commission that provided extensive documentation and analysis of abuses in corporate reorganizations.

The study concluded that a firm that served as underwriter for a company's securities should not advise the company about distributions to those security holders in a reorganization plan. It further found that such a firm should not advise the company about potential claims against those involved with the company prior to the bankruptcy, since this often would involve an assessment of transactions in which the firm participated.

We have strengthened, of course, bankruptcy practices and procedures over the years. We now have a dedicated bankruptcy judicial system, the establishment of a U.S. Trustees Office, and strengthening of active creditors committees. But, nevertheless, I think we continue to have a very real conflict-of-interest problem here.

My colleague has pointed out the letter of Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, a very distinguished member of the 1997 National Bankruptcy Review Commission. She pointed out that they had been asked to modify the disinterestedness standard in order to accommodate the geographic growth and increasing sophistication of professional firms of all kinds involved in Chapter 11 bankruptcy. She said they rejected that in the Commission by a lopsided majority.

These were expert people on bankruptcy law. It was the wise and prudent way to proceed when we are considering making important changes of this sort. They noted that in order to protect the integrity of the bankruptcy process, it was important to maintain this disinterestedness standard, so you don't have conflicting loyalties that may undermine the fiduciary duties of the creditors.

Furthermore, it was noted—I think this is an important point—that a standard of disinterestedness is necessary to maintain public confidence in the integrity of the bankruptcy system.

We ought not to have a situation in which allegations can be made that the conflict-of-interest situation is preventing a fair, reasoned, and objective judgment as to what ought to be done, and then they end up imputing hidden motives to the actors in the case.

It has been noted by Dean Rapoport, the Dean of the University of Houston Law Center, that one of the duties of the debtor in a bankruptcy case is to take a good, hard look at the pre-petition behavior of those who dealt with or ran the debtor to see whether that behavior contributed to the downfall of the debtor. Another duty is to see how the debtor can raise new post-petition funds in order to finance an effective reorganization. But those are two very important duties or responsibilities of the debtor in the bankruptcy case. Dean Rapoport goes on to state that both of these duties—taking a good, hard look at the pre-petition behavior of those who dealt with the debtor and also a good, hard look at how the debtor can raise new post-petition funds in order to help finance an effective reorganization—both of these duties would be compromised if the same investment bankers that were involved with the pre-petition debtor were allowed to serve as the ''objective, post-petition investment bankers.''

Stop and think about that for a moment. Clearly, it highlights a potential conflict of a very significant dimension.

There is an argument made that the bankruptcy court would still have to review this and could make a factual finding that there was not disinterestedness present. But she noted, and I quote, ''the current standard saves the bankruptcy court from having to make time-consuming, factual findings regarding the disinterestedness of those categories which by their very nature are rife with conflicts of interest. Removing investment bankers from the exclusion list will increase the time, cost and attorneys fees for every bankruptcy case without increasing the benefits to the estate as a whole.''

The final report of the National Bankruptcy Review Commission pointed out the strict disinterestedness standards are necessary because of the unique pressures in the bankruptcy process. The trustee and his professionals are required to act as a fiduciary to the estate, its creditors, and other parties in interest, and the court. The disinterestedness standard is designed to ensure that all issues relevant to the administration of the estate are properly raised and vented before the court. Therefore, we are trying to avoid a situation in which there could be a perception or an allegation of favoritism to favor one party over another, the charge that they are taking it easy on one group or group of creditors, or to refuse to pursue possible claims or avenues of inquiries because of any indirect or direct pressures.

The proponents of the provision that is in the legislation which we are seeking to modify by this amendment argue

we should simply give the discretion to the bankruptcy judge to allow investment banks to serve as advisers even if those banks underwrote securities with companies that subsequently filed for bankruptcy, leaving it to him to make a determination in that regard.

The SEC in its letter to us on that point said:

If the exclusion is eliminated entirely—

Which is what this legislation does——

we are concerned that the general protection in the statute which relies on the judge, at the outset of the proceedings, to forbid those with materially adverse interests to the estate, its creditors, or its equity security holders from advising a company in bankruptcy—may well be insufficient.

Dean Rapoport of the University of Houston Law Center pointed out that the current disinterestedness standard saves the bankruptcy court from having to make time-consuming, factual findings regarding the disinterestedness of those categories which by their very nature are rife with conflicts of interest. Removing investment bankers from the exclusion list will increase the time, cost and attorney fees for every bankruptcy case without increasing the benefits to the estate as a whole.

The amendment seeks to address one of the arguments that has been raised by the proponents of section 414, which is that the current per se prohibition on investment banks that have underwritten securities of a company in bankruptcy remains in effect as long as those securities remain outstanding, no matter how many years ago it may have taken place. It may well have been many years prior to the bankruptcy and the investment bank involved might no longer have a close connection to the bankrupt company.

Senator LEAHY and I have modified the original amendment which we planned to offer which would simply go back to the current law prohibition, and instead in this amendment we are offering a prohibition on investment banks that have underwritten securities of a company within 5 years prior to the filing of the bankruptcy petition.

Mr. LEAHY. If the Senator will yield for a question without losing his right to the floor, I ask the Senator from Maryland, if the bill was passed in its current form, could investment banks that advised or underwrote securities for companies such as Enron or WorldCom that filed bankruptcy, which ended up defrauding investors, could they then be hired to represent the interests of the same defrauded creditors during the bankruptcy proceeding?

The way the bill is now written, without our amendment, could they then be hired to represent the interests of the defrauded creditors?

Mr. SARBANES. I was going to say that is absurd, but as far reaching as that sounds, the answer to the question is yes. That is one of the reasons the potential that results from this legislation is so far reaching.

Gretchen Morgenson, on April 6, 2003, had an article in the New York Times headlined ''Advisers May Get Second Chance To Fail.'' She starts the article as follows:

Do you think Salomon Smith Barney, the brokerage firm that bankrolled WorldCom and advised it on a business and financial strategy that failed rather spectacularly, should be allowed to represent the interests of the company's employees, bondholders and other creditors while WorldCom is in bankruptcy?

She goes on to say:

If you answered no, you win a gold star for common sense and for knowing right from wrong.

We are just trying to get a ''no'' answer put into section 414 of this bill.

We have tried to make a reasonable and balanced modification that essentially preserves the basic conflict of interest protection but does allow this greater flexibility for investment banks that have not recently underwritten securities for the company to serve as advisers in the bankruptcy. But to simply remove the existing provision in the law altogether is to open up the possibility for abuses of major dimensions. Therefore, I very strongly support the amendment being sponsored by Senator LEAHY and by Senator WARNER.

There is no public purpose that will be served by allowing section 414 to remain in this legislation as it is currently written. In fact, to the contrary, it runs very counter to important public purposes.

Other articles of note include one by Alan Sloan in the Washington Post: ''Proposed Changes In Bankruptcy Law Twist Meaning Of 'Reform' Beyond Recognition.'' He goes on to point out the potential implications of this change.

There is also an article by Michael Krauss in the Washington Times headed, ''Bankruptcy Reform . . . With a Thorn.'' He goes on to say that he supports bankruptcy reform legislation but does not support section 414 of the bill because it removes from the excluded list of people not allowed to be employed in the bankruptcy the investment bankers who have had a connection with the company.

The amendment before the Senate is a reasoned and balanced proposal. We have tried to listen to the arguments being made on the other side and respond to those that we think have some merit to them without completely doing away with the ''disinterestedness'' standard. You have to have confidence in the integrity of the bankruptcy system. The total elimination of the investment bankers in terms of being precluded because they have a conflict of interest situation is not going to bolster consumer and creditor confidence.

I urge my colleagues to support this amendment. It is a fair and balanced amendment. It is badly needed. To fail to enact it will carry with it a tremendous risk in terms of how our bankruptcy process functions.

The PRESIDING OFFICER. The chairman of the committee, the Senator from Pennsylvania, is recognized.

Mr. SPECTER. I have secured the agreement of the managers to speak very briefly about another matter. It involves the Coal Act, which has provided benefit for many miners in Pennsylvania and throughout the country.

The Coal Act of 1992 mandated coal operators to fulfill their promise to provide their employees and families with health benefits, and those obligations could not be modified. As an original cosponsor of this legislation, along with the Senators from West Virginia, Senator ROCKEFELLER, and Senator BYRD, I am very closely aware of the effect on 14,000 retired coal miners and their dependents in Pennsylvania. Nationally, this act affects over 60,000 individuals, including every State except for Hawaii. These health benefits form a central underpinning for the medical care structure of the coalfield community.

It is a tough job being a coal miner. I have, in the course of my representation of the coal miners, gone 30-stories-deep underground, ridden in a cable car, crunched over like a corkscrew to avoid being hit by the ceiling as the cars moved in on the long wall to perform the mining operation.

The issue came forcefully home to me when I visited several hundred of the coal miners in Washington County, PA, more than a decade ago along with Richard Trumka, distinguished Pennsylvanian who had been president of the United Mine Workers and is now secretary-treasurer of the AFL–CIO. We went to court to verify this program, which is vital for the health care of these miners.

I was very surprised to see a Federal judge enter an order which said that the bankruptcy proceeding in a case captioned Horizon Natural Resources trumped the Coal Act. It is a surprise to me that that would happen under the existing law.

I know we are operating under a unanimous consent agreement where there has been a series of amendments set aside and we are in postcloture. Senator ROCKEFELLER earlier made comments about this amendment and was unable to secure agreement. In working through this bankruptcy bill we are laboring under a great many complications, a complication that if there are amendments unacceptable to the House, there will be a conference, and a conference resulted in the defeat of this bankruptcy bill several years ago.

This amendment is technically precluded at this time, but I wanted to take the floor. And I have discussed it with the distinguished chairing officer, Senator GRASSLEY, the principal proponent of the bankruptcy bill. In my capacity as chairman of the Judiciary Committee, I yielded to him because he

is the principal author. We have talked about it.

I understand we are not going to be able to get this amendment through at this time for technical reasons, but I wanted the 14,000 Pennsylvania coal miners and the 60,000 coal miners nationally to know of the concern of Senator ROCKEFELLER, Senator BYRD, and others. I have not had a chance to catch Senator SANTORUM on the floor, but he has been very solicitous and very concerned about coal miners' interests. But until I speak to him specifically, I would make only the generalized comment about his concern for the coal miners.

So what I intend to do at this time, recognizing there will be a successful objection, is to send this amendment to the desk and offer this amendment to the pending bill.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendments?

Mr. GRASSLEY. Mr. President, reserving the right to object, and I will object, but I would like to take just 30 seconds to explain that there are problems with the Coal Act. They are within the jurisdiction of the Senate Finance Committee, and we ought to look at all these issues in the context of a comprehensive review and a comprehensive solution.

So I would see a piecemeal approach, as is being done now through the bankruptcy bill, as, first of all, intervening in the jurisdiction of the Finance Committee, which as chairman I should protect, and, secondly, making more difficult the comprehensive solutions that we ought to find. So I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SPECTER. Mr. President, first, I thank my colleague from Iowa, with whom I have served since January 3, 1981. We came to the Senate at the same time, the sole survivors of 16 Republican Senators. I appreciate what he has said about taking a look at it.

I will be filing legislation to correct this, and I will be looking forward to the opportunity for a hearing in the Finance Committee. And I think other Senators will be joining me as well.

I understand the reasons we cannot have it in now, but let the 60,000 coal miners nationwide take heart, and the 14,000 Pennsylvania coal miners, that this is an issue which we will pursue and I think prevail on. We will ultimately win this, although not today.

Again, I thank my colleagues for letting me intervene.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 83

Mr. CRAPO. Mr. President, I stand to speak in opposition to the pending amendment. The pending amendment has been discussed as if it were seeking to stop investment banking interests who are involved in working with companies that face bankruptcy from continuing some kind of fraud or inappropriate conduct that helped to lead to the bankruptcy by prohibiting them from serving as investment bankers or investment advisers following the bankruptcy proceedings or during the pendency of the bankruptcy proceedings.

The fact is, however, section 414 of the bankruptcy bill and of the bankruptcy law does not eliminate the disinterested test for investment banks. Let me explain the way the law works at this point.

For whatever reason, when our current bankruptcy laws were put into place, a complete bar was put in place, so when a company goes into bankruptcy, its investment bankers cannot then function on behalf of the company. They cannot be appointed by the judge to continue to work as the company that works out its bankruptcy difficulties, whether it be in some kind of an ongoing bankruptcy proceeding or in a chapter 7 proceeding. Therefore, the disinterested test simply never applied because there was never any opportunity for an investment bank to serve in this role if it had had any relationship whatsoever to the company going into bankruptcy.

That posed a couple very serious problems. The first one is that investment banks that have no current relationship with the company and are possibly best suited to help them through their financial difficulties are conflicted due to having some minor role in the underwriting or some underwriting relating to the company years and years and years ago. That is under current law. What this bankruptcy reform we are trying to put through is seeking to do is to address that problem.

Similarly, investment banks that are most familiar with the issues facing a distressed company and are actually working with that company in an attempt to avoid bankruptcy are then compelled to walk away from their clients in their biggest hour of need if bankruptcy becomes necessary and the company has to make the bankruptcy filings. That is what this legislation that is being proposed is seeking to address.

The amendment would strike that and, instead of having a perpetual ban, would have a 5-year ban. Now, admittedly, the 5-year ban would solve one problem because it would make it so a company that 20, 30, 40, 50 years ago was involved in an underwriting would not be disqualified, but it still leaves disqualified all of the investment banks that may have been involved even in a bundled underwriting or in some effort to help this company in its financial dealings over the last 5 years prior to bankruptcy. It eliminates those investment banks, their expertise, and their knowledge of the failing company, from consideration in helping that company as it seeks to work through a bankruptcy.

Let me make it very clear: The proposed change in the statute does not eliminate the disinterested test. In other words, a question was posed a moment ago on the floor as to whether, in the case of Enron, an investment bank that had been involved in an underwriting for Enron could then have been appointed by the court, under the change in the law proposed here, to continue working with Enron after it went into bankruptcy proceedings. And the answer that was given on the floor was, yes, that is a possibility.

Well, first of all, the question assumes that any investment bank that had been involved with Enron was somehow involved in fraud because Enron was involved in fraud. We do not necessarily know that. But that gets to the point of what the bill we are proposing is seeking to do.

The bill maintains current bankruptcy law requirements that if an investment bank is to be appointed by the court to work with the bankrupt company, the court must make a determination that this investment bank is disinterested, that it passes the disinterested test. I would presume that if there were a participant in fraud, the court would not consider that to pass the disinterested test.

But the key point here is that what the proposal in the underlying bill seeks to accomplish is to have a judge take evidence, evaluate the issue, and make the determination of which investment bank is the best suited, passing a disinterested test, to help this company as it seeks to work through the bankruptcy issues. And there will be many cases when the best suited financial advisers are those who have a history of working with the company, of knowing the company's business, and of knowing the company's financial dealings, and being able to work with them.

In fact, in many cases, I would assume it might be a financial adviser, an investment bank that has been working with the company for the last 3 or 4 years to help them try to work through their problems, and for some reason, with what I consider to be a cookie-cutter solution being proposed by this amendment, they would be disqualified simply because they tried to help or were hired to help beforehand.

In fact, what we see here in this amendment is a chilling impact on companies going out and seeking investment bank advice before bankruptcy, if they know that bankruptcy is a possible outcome they may face, because they have a choice: Do we seek the best competent investment banking advice we can get before the bankruptcy, knowing that the bankruptcy law will prohibit us from ever having that advice if we do end up having to file or do they say: ''We may have to file and, therefore, we will seek less competent advice or our second alternative so we can have our first alternative when we file bankruptcy''? Why put companies into that kind of a complex problem?

Section 414 would subject investment banks to the same disinterested test as

other professionals. This is important to know. A company's legal advisers are not subjected to an automatic ban; they are subjected to a disinterested test. A company's accounting advisers are not subjected to an automatic ban; they are subjected to a disinterested test. And yet the effort here seems to say that for some reason we do not want to let the investment bank advisers be subjected to the same disinterested test. Instead, we want to presume that they are guilty of some inappropriate conduct because the company has not financially made it, and ban them from being able to work with the company once a bankruptcy filing takes place.

It is another one of those one-size-fits-all cookie cutter solutions that is coming from Washington, DC that is telling every bankruptcy judge across the country that they have no alternative in terms of their choice of who can be the investment bank advisers and supporters for a company that goes into bankruptcy, if there is any connection in the last 5 years between that investment bank and the company that had to file.

Bankruptcy courts currently review disinterestedness for all professionals, and 414 would allow judges the same discretion with investment banks as they have for attorneys and accountants. The current law has created a market, frankly, in which a small club of restructuring boutiques dominates the market for restructuring services in bankruptcy. In other words, they realize that if they even get close to a company before bankruptcy, then they won't be able to serve as a part of the restructuring effort for that company coming out of bankruptcy. So this sort of boutique business has developed where the only alternatives the judge has to turn to are those companies that specifically don't help until after the bankruptcy filing.

That is the issue we need to address. Do we want to create a system of investment bank advice for companies that are facing financial difficulties in which those companies have to make a choice as to who they will contact for support before the bankruptcy filing, knowing that whoever they choose to help them in their investment banking will be automatically prohibited from helping them if they do end up having to go into a bankruptcy?

Professionals are required to perform a firmwide review and disclose all actual and potential conflicts in their application to the court to be retained by the debtor. All parties in interest, including debtholders and shareholders, have the opportunity to make their position known before the judge.

Another important point is, somewhere in the debate that has been going on today, we heard: The judge may not know; the judge may make a mistake; the judge may not be aware of all the facts; it is going to be very expensive for the judge to have to go through and look at these investment banks to be sure that he knows whether they are culpable or whether they are simply competent investment advisors.

The fact is, the costs that are being put onto the system now by these blanket bans on investment banks are generating more costs to the restructuring process than any cost that could be generated by having the judge make a disinterested analysis. But even if the judge somehow made a mistake, even if we want to hypothesize that judges are going to make mistakes and bad actors might be allowed to be an investment bank adviser or participant in a bankruptcy, any time information becomes available to make it evident that the disinterested test was not satisfied, the judge can change that ruling and terminate the professional's engagement.

It seems to me what we need to do in our bankruptcy laws is to promote more flexibility. We need to give opportunities for all investment banks to participate with those companies in our economy, whether they be strong or facing financial difficulties, and help them to the maximum of their abilities. And if it turns out some of those companies end up having to make a bankruptcy filing, then it is important that we protect the flexibility for the bankruptcy judge to select the most qualified investment bank support to work out that bankruptcy circumstance.

That is what is in the best interest of our shareholders, in the best interest of our economy, and in the best interest of the debtor and the creditors. We must make certain that we don't allow one more very rigid Federal standard to continue to create this kind of difficulty in the bankruptcy process.

Two other points. First, all Senators have received a copy of this letter. There is a letter that was sent out which was signed by those in the industry who are involved in this, who very strongly indicate that the reform and the flexibility this bankruptcy proposal promotes should be supported. That includes the American Bankers Association, the Bond Market Association, the Financial Services Roundtable, the Futures Industry Association, and the Securities Industry Association.

Frankly, although I know Chairman Donaldson has been quoted here, I am not aware that the SEC itself has ever taken a position on this issue. If that is the case, I stand corrected.

Mr. SARBANES. Will the Senator yield on that?

Mr. CRAPO. I will yield.

Mr. SARBANES. The letter we submitted reflected the opinion of the commission. Chairman Donaldson had indicated a personal view in a hearing, and then I sent a letter asking him for the commission's view.

Mr. CRAPO. And he responded on behalf of the commission?

Mr. SARBANES. It begins: ''Thank you for requesting the Commission's views on section 414 of H.R. 975.''

Mr. CRAPO. I stand corrected on that.

Mr. SARBANES. In response to a question from me, he expressed his personal views. He writes:

Now I am pleased to convey the view of the Commission . . .

Mr. CRAPO. Reclaiming my time, I stand corrected on that.

This will not be the first time, even in recent months, that I have disagreed with the SEC. Although I understand that your letter does speak for the SEC, the fact is, there is one other point I want to make. That is, as is the case with a number of the amendments we have dealt with in debate over the bankruptcy bill, which we have been trying to move forward for 8–plus years, we face a situation in which we are trying to keep this bankruptcy bill clean and not have amendments that are objectionable to the House included in it so that we again run into the problem of not being able to move the legislation. This is one of those amendments. I am confident and I have an understanding that this is one of the amendments the House would not allow and would cause us to then have to go into conference and bring down the bill.

The bottom line is, it is bad policy. We have bad policy in current law. The bill seeks to create the flexibility that will allow a judicial determination as to the best and most highly qualified and disinterested investment bank advice for companies involved in bankruptcy. We should not change the underlying bill by substituting a rigid 5–year ban prohibiting many companies that are in the best position possible to do the best good for the company that needs their help at this point from being able to serve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I want to take a moment to respond to the Senator from Idaho. I think this is important.

Elizabeth Warren, who is a distinguished professor at Harvard Law School and an expert on bankruptcy, has said there is a reason why the professionals who have worked for a business that collapses in a bankruptcy are not permitted to stay on. The company must go back after bankruptcy and reexamine its old transactions. Having the same professionals review their own work is not likely to yield the most searching inquiry.

She goes on to say about the provision in the bill: It is not a provision to ensure investor confidence or to enhance protection for employees, pensioners, or creditors of failing companies.

Let me make one other point which needs to be understood. To the extent an investment bank—and it needs to be understood that an investment bank has been viewed as integrally related to the financial arrangements of the company, similar to creditors, security holders, and insiders—advised on the creation of a company's capital structure before a bankruptcy filing, it may itself be exposed to potential liability. As it works out the deal that permits the company to emerge from bankruptcy, it may be tempted to prefer the creditors who have a potential claim against the investment bank.

Now, that is the very sort of conflict that we simply ought not to permit. We address one point made by the Senator about a connection a long time ago that is no longer relevant in the 5–year provision, and the amendment takes care of that.

Beyond that, I think we would be making a grave mistake to allow this radical change to take place. I very much hope my colleagues will support the amendment offered by Senator LEAHY, Senator WARNER, and myself.

I yield the floor.

Mr. LEAHY. Mr. President, we have had a good debate. I mentioned to the Senator from Iowa, I don't know if other people wish to speak, but I am perfectly willing to go ahead and have a vote. I know the leadership is trying to move things along and get things going. I am willing to have a vote.

Mr. GRASSLEY. I would like to speak for a short time.

Mr. President, under current law, investment banks are not allowed to compete on the same playing field as other professionals. Right now, investment banks are precluded per se, in many circumstances, from representing a debtor in a business bankruptcy if the investment bank acted as the investment banker for the company before it filed for court protection.

I think this is a draconian rule. The bill would give the bankruptcy judge the ability to determine whether an investment banker is disinterested, just as the judge determines whether other professionals are disinterested. The provision in the bill, it seems to me, is not only fair, but it will also safeguard the proceedings from any conflict of interest. Do we trust our Federal judges, or don't we, to make this determination? After all, the environment for this is in the judiciary—before judges. We happen to trust them for all other professionals involved in the bankruptcy proceedings, whether there is any conflict of interest for anyone involved. So then the question becomes, why should it be different for investment banks?

I think the provision in the bill is fine as it is. It is part of the compromise. We should allow a judge to make this determination and, thus, protect the integrity of the bankruptcy process. So I ask my colleagues to oppose this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, since we have the list of cosponsors of the pending amendment, I ask unanimous consent that the Senator from Virginia, Mr. WARNER, be removed as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I checked with the majority staff and they have no objection to my seeking to be recognized for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDICTMENT OF RAMUSH HARADINAJ

Mr. BIDEN. Mr. President, yesterday the International Criminal Tribunal for the former Yugoslavia at the Hague, known by the acronym ICTY, indicted a fellow that I met several years ago, a guy who was very much involved in the carnage that took place at the time of the war in Kosovo. His name is Ramush Haradinaj. This is a young man who looks like he could lift an ox out of a ditch. A very hard, tough guy.

Until yesterday he happened to be the Prime Minister of Kosovo. He was indicted for war crimes in Kosovo during the period of 1998 and 1999. Mr. Haradinaj declared himself entirely innocent but resigned as Prime Minister, surrendered voluntarily, and flew to the Netherlands today to turn himself in. He also did something highly unusual in the Balkans. He issued a statement calling for calm in Kosovo.

From the creation of the Hague Tribunal a decade ago, I have supported its vitally important work. Beginning with Judge Goldstone, my staff and I have met with its chief prosecutors over the past decade. I have great respect for Carla Del Ponte, the current chief prosecutor and for the court's judges.

I am confident that Haradinaj will receive a fair trial. Without presuming to pass judgment on his innocence or guilt, though, I would like to comment—this is the first time I have ever done this—on my personal impressions of him and also to put his arrest in a larger context relating to the entire territory of the former Yugoslavia.

Let me begin with my meeting with him in Pristina in January of 2001. We discussed Kosovo's future, and he seemed genuinely to recognize that the only way forward was for the rights of the Kosovo Serbs, and of other non-Albanian minorities to be guaranteed. During that trip, I flew by helicopter to western Kosovo where I visited the Serbian Orthodox Visoki Decani Monastery, a 14th century architectural masterpiece which last year was named a UNESCO World Heritage site.

During the fighting in 1999, the Serbian Orthodox monks of this monastery had saved Kosovar Albanians from persecution by Serb forces. Again, these were Serbian Orthodox monks saving Kosovar Albanians most of them Muslims—from persecution by Serb forces.

Nevertheless, when I visited the Visoki Decani Monastery nearly 2 years later, Father Sava and other monks told me that they were in great danger. In fact, Italian KFOR armored personnel carriers were lined up in the snow just outside the monastery's stone walls as a deterrent.

Knowing that the territory around Decani is Mr. Haradinaj's political base, I sent him a confidential letter after I returned to Washington. In it I wrote that I was counting on him to personally guarantee and protect the Serbian Orthodox monastery I had just visited.

In March of 2004, serious riots against Serbs and other non-Albanian minorities broke out across Kosovo. Hundreds of homes were destroyed, and many medieval Serbian Orthodox churches and monasteries were burned to the ground. KFOR proved unable or unwilling to prevent this destruction. In fact, in several cases, the outrages occurred while European KFOR troops stood by. One of the few venerable monasteries that remained untouched was Visoki Decani. Mr. Haradinaj had kept his promise.

During the 1998–1999 war, Haradinaj was a leading commander of the Kosovo Liberation Army, the KLA. Hence, his election as Prime Minister last year was greeted with considerable skepticism. From all reports, however, in his brief tenure, he has earned nearly unanimous praise, including from the head of the U.N. mission in Kosovo, for his constructive and effective leadership. I am told that even Serbian leaders in Belgrade privately acknowledge that of all of the Kosovar political leaders, it is Haradinaj with whom they could potentially negotiate with the greatest degree of confidence.

Mr. Haradinaj's call for calm, which so far has been heeded, was based upon a realization that a repeat of the violence of March 2004 would deal a fatal blow to the Kosovars' hope that the process toward negotiations on the final status of Kosovo can begin later this year.

I have said repeatedly that self-determination by the people of Kosovo is ultimately the only realistic solution to

the problem. Since more than 90 percent of the population is ethnic Albanian, as is Mr. Haradinaj, with a collective memory of extreme persecution by the Serbian government of Slobodan Milosevic, I can't imagine they would ever vote for a return to being governed by Belgrade.

On the other hand, I have coupled my advocacy of self-determination for Kosovo with the precondition that the personal safety and freedom of movement of all Kosovo Serbs, Roma, Ashkali, Egyptians, Turks, Bosniaks, Gorani, and other non-Albanian minorities are being provided and are guaranteed for the future. As yet, unfortunately, this has not occurred. Mr. Haradinaj's statesman-like actions are intended to keep Kosovo on the path toward Final Status negotiations.

In the overall post-Yugoslav context, Mr. Haradinaj's willingness after his indictment to surrender voluntarily and go to The Hague is striking. It stands in glaring contrast to the behavior of the three most infamous individuals indicted by The Hague, all of whom are still fugitives, resisting arrest: former Bosnian Serb General Ratko Mladic, former Bosnian Serb leader Radovan Karadzic, and former Croation General Ante Gotovina.

By their evasion of ICTY's indictments, all three are blocking their countries' progress toward entering Euro-Atlantic institutions, a necessary precondition for stabilizing the Western Balkans. The surrender of Mladic, who is thought to be in Serbia, is necessary for Serbia's joining NATO's Partnership for Peace and for eventual NATO and EU membership.

Karadzic's unwillingness to give himself up is blocking Partnership for Peace membership for Bosnia and Herzegovina.

Gotovina's fugitive status is holding up Croatia's promising candidacy for EU membership.

Whatever the eventual adjudication of his indictment, Ramush Haradinaj by his dignified departure and public statement has proven himself to be a patriot. The same cannot be said of Mladic, Karadzic, and Gotovina, whose selfish actions are standing in the way of much needed progress for Serbia, Bosnia and Herzegovina, and Croatia.

Whatever Mr. Haradinaj's fate, I want to publicly salute him for his personal courage, for the statesmanship he has demonstrated over the last two days, and for having kept his word by doing exactly what he told me he would do with regard to the monastery. I wish him well. I hope justice is served, and I applaud him for his wise decision to cooperate with the Hague Tribunal.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be excused from voting for the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, those Americans who have been watching this debate on bankruptcy reform for the last 8 days must wonder what in the world is happening in the Senate this evening where we have had these prolonged quorum calls. We have had a series of votes over the course of the day. We had tentatively planned to have another series of votes on amendments at 5 o'clock this evening.

But then because of the concern of our Republican colleagues on one particular amendment, an amendment that would have addressed the provisions in the underlying legislation that repeals the conflict-of-interest provision for major banks, suddenly the quorum call goes in and there is no further action on the issue of bankruptcy.

This is absolutely amazing. Many of us have pointed out how this is special interest legislation. It was written by the credit card companies for the credit card companies. They are the principal beneficiary.

The argument for this legislation, according to the proponents, was: Look, we have a number of spendthrifts in the United States. People ought to act responsibly. This legislation will deal with it.

That was their argument. And that is an argument that those of us who have differed with this legislation would gladly accept. The percentage of spendthrifts, so to speak, is anywhere from 5 to 7 percent of the total number of people who go into bankruptcy. Those of us who have been battling this legislation for the past several days all agree, we would join up with our colleagues in a bipartisan way to address that issue. But that isn't what this bill is about.

This bill is about encumbering working families, primarily, who fall on difficult times, as we have pointed out during the debate. We have offered a series of amendments. A number of my colleagues have offered amendments. Every one of them has been defeated by our Republican colleagues.

Now in the final hours of consideration of this legislation, because one particular amendment is going to touch the banking industry and they are unsure of the votes, they effectively call off all the votes for this evening. That is what is going on here in the Senate.

If you want to put your finger on special interests, look what is happening in the Senate at this moment. We have the Sarbanes-Leahy-Warner amendment, the authors of which were prepared to vote on. But no, the Republicans say, no, we are not going to let the Senate vote on that, because they are not sure of the votes.

They are not sure of the votes. They are not sure that they have the votes to defeat that particular provision that would override a provision that is in the banking bill that repeals some conflict of interest for banking interests. Isn't that something? Doesn't that really show what this legislation is all about? Sure it does.

Why not call the roll? Why not call the roll? We have been listening about let's move the banking legislation along; let's move it along. Why do you have to take time when you are talking about what the impact of this legislation is going to be on the members of the National Guard and Reserves, who go overseas—the 20,000 that would be bankrupt this year and subject to the harsh provisions of this legislation.

And then we had a phony amendment that was accepted here that will do virtually nothing to protect them. What about the homestead exemption, which says that those who exist in five States are going to be able to squirrel tens of millions of dollars away so that if they go into bankruptcy they would be able to protect their million dollar homes? Why not have fairness across the country? Oh, no, we cannot do that because we have a delicate compromise. What is that delicate compromise they are talking about? I thought this legislation was going after spendthrifts. We agree to go after them, but when we know half of the people going into bankruptcy are going there because of health care bills that are run up, with 75 percent of those individuals covered with health insurance, but because they have a heart attack in their family or because they have a stroke in their family, or because they have a child who has spina bifida in their family, they are subject to the harsh provisions of this legislation that will virtually make them an indentured servant of the credit card companies for the next 5 years. That is what is in this bill. We have pointed that out. No, we will vote that down. We will vote down any consideration for the National Guard and any consideration for the Reserve if they happen to be individuals who may be running a family business, one or two working in a particular employment or a mom-and-pop store, and they go overseas and they are going to serve for many months, and the store bellies up, then they are subject to the harsh provisions of this. No, we are not going to give consideration to those veterans. What about those individuals? It could happen to any family—except Members of the Senate, who have very good health care. It would not happen to us. But we cannot get health care for the rest of

Americans. No, that is just too bad, that they have a heart attack in their family, or a stroke, or that they have a sick child, they are going into bankruptcy, and they are going through the harsh provisions of bankruptcy that are going to make them pay for the next 5 years to 10 years $15 or $20 a week, and continue to bleed them. That is what is in this bill.

The American people are beginning to understand it. We talked about all the single women who go into bankruptcy because their ex-husbands do not pay them money for child support. Do you think we could have some understanding or some sensitivity to their particular problem? Absolutely not. No way. Let's take those spendthrifts and put it right to them. That is what this bill does. No, we cannot deal with that. What's your next amendment? Let's go on, it is getting late. Let's have time. Time, they say. What has happened here for the last 3 hours? The clock has run and they cannot figure out whether they have the votes to protect the banking industry. That is what is going on. The Republicans are trying to find out whether they have the votes to protect the banking industry, and they get all worked up when we call this special interest legislation. You have not seen special interest legislation until you see this bill.

We used to, around here, look at a piece of legislation and say, who benefits and who suffers with this? Well, it is very easy to find out here who benefits. It is the credit card companies. They are the ones who are going to be put in the catbird's seat. Their estimate in the passing of this bill—listen to me—this legislation makes the bankruptcy courts of the United States the collection agencies for the credit card industry of America. Who do you think pays for the bankruptcy courts? You do, Mr. America. Ordinary Americans pay for those bankruptcy judges and the bankruptcy courts, and they are going to be out there as a collecting agency for the credit card companies. That is what this is about.

It has been difficult to get anyone on the Republican side to understand that. Well, we voted on this some years ago. We have a changed condition from some years ago. Sure, we have the problems of bankruptcy. What about Enron and WorldCom? What about Polaroid in my own State? When they went belly up, the people not only lost their health insurance and pensions, they also lost their investments in what was called an ESOP—their requirement to invest in the companies. They all lost out on it. We are sure of one thing: Ken Lay and all of the people at Enron have big houses all sheltered away in places like River Oaks in Houston, TX. They have all those protected, tens of millions of dollars. What happened to the other people?

So we do have a problem, but this bill doesn't address it. It does nothing about WorldCom or Enron or about Polaroid and what happened to those workers. Zero. Zip. Nothing. And then, when we found out that there is another loophole where, when wealthier people know they are going into bankruptcy, they can get a clever lawyer and put their money in trust and be free from the reaches of the bankruptcy court, that was addressed. No, we are not going to change this legislation. We are concerned about these spendthrifts—whoever they are. I have been on the floor for most of the time in this debate, and I still have not heard who they are. All I heard is that we passed this several years ago, and we have to pass it again.

Well, there have been many changes since the last time we addressed this bankruptcy bill, and the major companies and corporations have basically done in the workers with their pensions, with their health insurance, with their life insurance; they have done them in, but this bill doesn't do anything about that. And then we have the issue of the use of these trusts to protect the assets of these wealthy debtors who are going into bankruptcy. But this bill doesn't do anything about that. We have the inequities where people in at least 20 or 25 States across the country, their investment in their homes will be protected up to $5,000 or $7,000, but not in Texas or Florida, where you can have tens of millions. Fair? Equitable? No, we are not going to do anything about that. No, we have not done anything about any of these issues.

What we are basically saying is that those people who have worked hard, have health insurance, and had a serious health challenge or need in their family—just enough to tip them over—is that we are not going to show them any mercy. Absolutely, no, put the wood to them. Veterans, put the wood to them. Single moms who are not getting their payments of child support and alimony, put the wood to them.

If you happen to fall below the median line, so you are outside—you would think that if you could show that your total certified income was below the median income of your State, you are supposed to be free from repaying. That is what you heard on the floor of the Senate. Yet when amendments are offered to make sure that all the other punitive provisions that are added to that—you have to go out there and enlist in some course on credit. Find a course on credit counseling. These are people who average $12,000 to $15,000 a year in terms of income—you are going to require them to take a credit course? They have to demonstrate that they graduate from that course; otherwise they will be subject to the $5 or $10 a week in terms of payment.

This bill is all about $5 billion dollars in additional profits to the credit card companies. That is what this bill is all about. Where do you think it comes from? People who have gone into bankruptcy. Who are those people? They are the people that have the heart attacks. They are the men and women whose jobs have been outsourced.

They are the mothers, single moms who are not getting paid alimony and child support. Those are the people who are being hurt, and those are the people who are hard-working Americans and who are going to have their final drops of blood drawn out of them with payments. That is this bill.

We have been saying this is a special interest bill; tonight reaffirms it. The Republicans will not vote to restore a provision in this bill that was existing law that dealt with conflicts of interest for banks. They do not want to risk a vote in the Senate tonight. Why don't they explain it? Where is their shame? Why don't they explain it to the American people? Where are they? Where are all these proponents of this wonderful bill to explain why it is so difficult for them to decide tonight? This is just seamy, just a terrible way to legislate.

We have seen these votes, as I mentioned, over time. We have seen who the vulnerable people are. We have seen who the beneficiaries are. We have pointed out what has been happening in America, across the landscape, over the last 4 or 5 years with the loss of jobs, the loss of extending unemployment compensation to people who paid into the unemployment compensation fund for a long time. The jobs are not out there. We have 8 million people who are unemployed, and there are 3.4 million jobs out there. There are going to be people who cannot work, cannot find work.

Mr. REID. Will my friend yield for a parliamentary inquiry?

Mr. KENNEDY. Yes.

Mr. REID. Would the Senator from Massachusetts want an hour of my time?

Mr. KENNEDY. I thank the Senator very much. I appreciate it.

Mr. REID. I yield the Senator from Massachusetts an hour of my time.

Mr. KENNEDY. Mr. President, I thank the Senator.

What has happened out there? We have seen the economic challenge for workers as a result of outsourcing, the mergers that have taken place, a number of them in my own State that are having a direct impact.

There are two important industries that are the fastest growing industries in America. One is the collection industry. That is right, the collection industry, the people who spend their time dialing people who owe money on credit cards. They keep dialing—talk to the principal, talk to their children, talk to them at 3 o'clock in the afternoon when the children come back from school. That industry is growing.

The second industry is part-time workers. That is what is happening. We find with part-time workers that they do not have coverage. People are ready to work. They want to work. They want these benefits. They have fought for these benefits over their lifetimes, the primary benefit being health insurance.

We find out that what has happened in the United States today is the collapse of the pension system. What we are finding today is the lowest rate of savings in 40 years. And what does this administration want to do? They want to give Social Security to Wall Street. They want to give Wall Street Social Security and privatization. They took care of the major companies with the class action bill just a week ago, and now they are ready to take care of the credit card companies. But they cannot quite make up their mind whether the vote in the Senate that would restore existing conflict-of-interest provisions, which are existing law and which, I might point out, the Securities and Exchange Commission supports—not what is in this bill, but the amendment of Senators SARBANES, LEAHY, and WARNER. They support that position. The SEC supports it because of conflict of interest. But not our Republican friends. No, they cannot make up their mind. If they add that to it, the power of the banking industry would be so strong over in the House of Representatives, they will have a stalemate, and then they will not get their goodies. They will not get their goodies. This is what has been happening.

Look at the profits of the industry that is going to benefit, the credit card industry. In 1990, 6.4; 1995, 12.9, 2000, 20; 2004, look at this, $30 billion, between 2000 and 2004. Find an industry like that in America, except maybe the Guaranteed Student Loan Program, where we have a loan guaranteed by the Federal Government and lenders make 9% on some student loans. Parents wonder why the cost of going to school at the universities are so high, because the government is padding the pockets of student loan providers with tax payer dollars. These are the profits.

Who are the people affected, as I mentioned before, during the course of this debate? We have 1.5 million bankruptcies annually and half of them are as a result of illness. Nonmedical causes, 54 percent; medical causes, 46 percent. But we are not going to show those. This bill was supposed to go after the spendthrifts. We can get the spendthrifts. We do not have to put these people through the mill. That is what this is really about.

We are here this evening waiting until the clock moves down. We are at our offices constantly wondering when we are going to start the votes. Two votes were supposed to be at 5 o'clock—one to deal with single women who are in bankruptcy because they are not being paid their alimony and child support. That was dismissed out of hand; you will have to take that to a vote. We are prepared to take it to a vote, and we will certainly continue to take it to a vote. If we are not successful on this, anyone who thinks we are going to let these issues go away just does not understand those of us who are opposed to this particular program.

We are also going to have an opportunity to vote on what has happened to so many of our American families as a result of outsourcing and how they have faced the economic challenges over recent weeks and months. More than 450,000 jobs have been outsourced. Over the next 10 years, we are expecting close to 3.4 million jobs to be outsourced, going outside the country.

We have seen what is happening in manufacturing all across this country. We all know that manufacturing jobs are the ones that have the higher pay. That has been part of the phenomenon. Do you think that concept is of any importance to the proponents of this legislation? Absolutely not. No way.

Health care prices have gone through the roof by 59 percent and the cost of prescription drugs 65 percent, and the fact we are an aging population with our parents, children, almost a third disabled who need those prescription drugs, and the prices are going up through the roof—are we giving them any consideration? Absolutely not. We do not care about the workers who have gotten shortchanged. We do not care about those who have needed prescription drugs and have been bankrupted in paying the prices.

This is the same Republican Senate that would not permit the Secretary of HHS to negotiate prices downward—do you hear me—like we do in the Veterans Administration. Here we have hundreds of thousands of people who are going bankrupt because of increases in the cost of health care and prescription drugs, and we—most of us on this side—who are opposed to these harsh provisions tried to make some difference several months ago to permit the Secretary of HHS to negotiate prices downward, as they do in the Veterans Administration. But, no, we are not going to let you do that. So that was defeated. You cannot import cheaper drugs from outside the country. You cannot get cheaper prices here. And what happens? You end up going into bankruptcy and end up with the harsh provisions of this legislation.

This legislation is not fair, it is not just, and tonight we have seen what this is all about.

The bankruptcy bill as written contains a provision, section 414, which would repeal the provision in current law on investment banks which underwrote a security of the company in bankruptcy from now serving as adviser to the bankruptcy. This is a basic conflict-of-interest prevention in current law, which this bill would repeal. It is one of the many shameful special interest provisions in this bill.

To their credit, Senators LEAHY and SARBANES offered an amendment to remove this provision and maintain the current law against conflicts of interest by the investment banks. It appears that it may have the votes to pass, so to protect the investment banks the Republicans have effectively shut down the process. There should be no doubt, when people finally vote tomorrow, what this bill is all about, who it was for. When it is a fight for the real people, then we hear from the other side saying, no, no. But when it is their friends in the banks who are threatened, it shuts down debate in the Senate.

Clearly, there is no room in the Republican agenda for the real needs of the real people, the veterans, the workers, the mothers, the children, and the widows.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will have a little bit to say about what the distinguished Senator from Massachusetts has been talking about, but I rise in opposition to the Kennedy amendment to S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Now, it is important that colleagues on both sides of the aisle fully understand what this amendment does to our bankruptcy laws and what it does to the prospects for reform. Before I start, I will take a few minutes to remind everyone what this bill is all about. The short answer is fairness. Those who can pay their bills should pay their bills. That is the American way.

All law-abiding, bill-paying consumers pay when some do not repay their obligations. You and I and every citizen of this country is going to pay if we allow people who can pay to escape their obligations, and this bill stops the gaming.

This is not too revolutionary an idea, but to listen to some of the opponents of this legislation on the floor these last few days, one would think we are trying to square a circle.

I have been down on this floor quite a bit over the last few days and I have heard many of the arguments from the few Senators against this bill, and I emphasize the ''few Senators against this bill.'' It sounds pretty familiar. I have been around this place for a long time and I only know one thing for sure. At the end of the day, some on the losing side will think that the underlying bill is without any merits at all and that their concerns have not been treated with the seriousness they feel they deserve.

The principal substantive argument we have heard is that this bill goes too far and too fast; we have to take it slow; we have to rethink this; this bill is too extreme, they say. For some of my colleagues across the aisle, this is the same old song we have heard now for 8 solid years that we have tried to put this bill together and it has always had huge bipartisan support. That is bipartisan support, Democrat and Republican support.

I am a bit confused by some of the arguments that have been used on some of the same old amendments and against the bill itself. Sure, there are places we could have done better in this bill, as in every other legislation. There are always things we could do better. But the votes we have gotten on this bill, on its amendments in committee, and in previous Congresses are

as good an indication as we can ever have of the underlying reasonableness of these proposals.

As a long-time supporter of the bankruptcy bill, I was extremely pleased by the strong bipartisan vote we had on cloture yesterday, 69 to 31. That is not just Republicans; there are a lot of Democrats who know this bill is the answer to a lot of the problems we have in bankruptcy in our society, and who have been working with us for 8 solid years in a bipartisan fashion. But to hear some of our critics, one would think that everybody concerned, all 69 of us, are nutcakes who do not know what is going on in our society or do not care for the poor, or for the weak, or for the worker, or for the union man. Give me a break.

I am one of the few people in this body who ever held a union card. I worked for 10 years in the building construction trade unions, earned my journeyman's card as a wood, wire, and metal lather, now a carpenter today, and I am darned proud of that. I think a lot about people who are not as fortunate as we are in the Senate.

As a long-time supporter of the bankruptcy bill, I was extremely pleased by the strong bipartisan vote, 69 to 31, on cloture. That was a big bipartisan vote by any measure. This vote is in keeping with the long record of bipartisan support for this bill over the life of the legislation.

I will briefly review this history: We held our first meeting on this in a Judiciary subcommittee in 1998. I want to make sure everyone heard that right: 1998. Early on, the good-faith compromises began. To give everybody an idea, these are some of the amendments we accepted in committee over the last 7 years. We modified the homestead exemption. We modified the means test. We allowed for sanctioning of attorneys who file abusive claims. We made privacy concessions for filers. We prevented creditors from demanding repayment for debts incurred through predatory lending practices, something that has long been overdue for the poor, the weak, and the unfortunate. All of these were amendments from my Democratic colleagues. I could go through dozens of others.

Two weeks ago, the Judiciary Committee held another markup on the bankruptcy legislation. We adopted five more amendments proposed by our Democratic colleagues. If some of the amendments that have been proposed on the floor sound similar to the matters I listed, that is because they are. Taken in a vacuum, as it might sound to anyone who randomly tunes in on C–SPAN, these amendments might sound reasonable. Yet in proper context of past history and compromises, many of these amendments should be understood for what they are: more of the same.

Many of the amendments address issues we have already negotiated previously. Frequently, these amendments make this a better bill. But now after so many years of hearing the same complaints, even after we attempted to address concerns by accepting or modifying amendments, including, I repeat, five in their latest and hopefully last markup of bankruptcy reform in the Judiciary Committee, it is less than clear that some of these remaining amendments will improve this already fully vetted bill.

The five amendments adopted in the markup ran the gamut. One was a technical fix that created a more restrictive inflation adjustment plan. We decided to prevent corporate executives—that is corporate executives, by the way—from declaring bankruptcy to avoid paying fines for securities fraud. That does not sound like something that hurts the little guy. We are trying to stop this type of fraud.

We accepted three amendments from the senior Senator from Massachusetts, Mr. KENNEDY. We clarified the means test, even in an instance where we sincerely believed that the means test was already more than clear, to explain that without any debt, health and disability expenses will not be included against a filing for bankruptcy. We allowed for a trustee in cases of fraud involving persons representing the debtor. In an amendment that many think we went too far on, we even accepted a compromise version of an amendment that restricted payments to executives and businesses going through a bankruptcy. Unfortunately, this amendment may discourage senior officials from taking on the task of seeing a company through a difficult financial reorganization. The unintended consequences of this might be to further limit the ability of damaged companies to emerge from bankruptcy and to keep thousands of employees on the job. They may lose those employees. Those employees may lose their jobs if we cannot keep good, competent executives there. I think this issue deserves more attention. But we agreed to it.

I am hopeful. I have been chatting with my good friend from Massachusetts and he has indicated he thinks we might be able to resolve that problem so people will not lose their jobs. But it depends upon what he thinks, not on what I think, because I accepted the amendment in committee, as the person who was in charge of the committee at that time.

Fairness demands that we work with our colleagues in the minority but this is a two-way street. Fairness also demands that large bipartisan majorities, after they have done all they can to reach agreements with the other side, be allowed to move on. That is why we invoked cloture, so we can move on.

This bill is a case study in such accommodation. I could go through dozens and dozens more accommodations we made to the other side, and to people on this side as well. This bill first passed all the way back in the 105th Congress. Let me refer to this chart. In the 105th Congress we passed this bill 97 to 1. I don't think everybody who voted for this was an idiot, who did not care for the poor and the weak and the infirm and the downtrodden. No. We are trying to solve some of their problems. This bill passed the Senate by a 97 to 1 vote. You cannot get much more support than that. There is no denying the bipartisanship of that vote.

When we came back to the issue in the 106th Congress, we again had massive bipartisan support for this bill. The Senate passed H.R. 833 on February 2, 2000, 83 to 14. I think that was a pretty good bipartisan vote. It is virtually the same bill. Then the conference report came back and on December 7, same year, 2000, we passed this same bill 70 to 28. That was a big bipartisan vote—which was right. That bipartisan conference report was supported by Democrats and Republicans. That was vetoed with a pocket veto by President Clinton. He had a right to do that, but he pocket-vetoed it because it didn't have an abortion amendment on it.

What about the 107th Congress? Did we give up hope? I can tell you that I did not. I just could not believe, I still cannot believe that a bill with such wide support could repeatedly fail to become law. So what did we do in the 107th Congress? Let me refer to this chart. In the 107th Congress, on March 15, 2001, this bill passed again, 83 to 15, and then passed again, 82 to 16. Those are bipartisan votes. I don't think the Democrats who voted with us are idiots or did not care for the poor. I don't think they failed to acknowledge that we have to take care of those who are unfortunate in our society. They did acknowledge that it cost every family in America $400 extra because of what is going on in this system.

All in all, the full Senate has voted favorably on bankruptcy reform legislation five times. Five times, all sweeping bipartisan votes, and the bill is not yet signed into law.

If we adopt any of these amendments from people who will never vote for this bill no matter what we do—they would rather criticize it than vote for it. I can criticize aspects of this bill myself, I believe. But it is a classic working together in the best methodology that we have, to bring everybody together and get legislation done that will do a lot of good. It will cause people, who can afford to, to pay their bills, or at least pay some of their bills.

It seems to me that is the American way. We want to teach our children, our young people, that it is important to pay your bills. It is important to live up to your responsibilities.

We do a lot to make sure corporate America lives up to their responsibilities in this bill as well. The bill is not signed into law yet, but we hope we can get it through—apparently not tonight, but by tomorrow. If not tomorrow, then Friday. If not Friday, Saturday. As far as I am concerned, whatever it takes to get it done.

These reform-minded votes are not just coming from the Senate. Here is

how the House voted over the years, just so everybody knows. There are 535 Members of the House. Here is how they voted: 300 to 125; 313 to 108; 306 to 108. Overwhelming bipartisan votes, because this bill is the best we can do. It will do a lot of good, to make things right in our society. With all due respect, these are not even close calls. They are consistent, bipartisan blowouts. But, to listen to the opposition, you would think this legislation is supported by only a small minority of Representatives in the House of Representatives or in the Senate. Nothing could be further from the truth.

I really do not know what else we can do. We have compromised when it was reasonable to do so. As a matter of fact, in our very first subcommittee debate on this issue we accepted an amendment from my distinguished colleague, the Senator from Illinois, that adjusted the requirements for being subject to the means test. That amendment created a safety valve for those who fall below the national median income.

This was an important amendment. This bill does not track it exactly, but our exclusion of those who fall below the State median income takes this original amendment as a guide. It materially limited the reach of the means test. It allowed a fresh start to those poor people who are drowning in a sea of debt with no way to pay it back.

I said many times during this debate and I will say it again: 80 percent of bankruptcy filers will be excluded from the means test—80 percent. They will be permitted to file chapter 11, which will completely wipe out their debts. The supposed draconian means test has results in only one half of the mere 20 percent that it even applies to. It allows those with incomes that remain above the State median income, after numerous health and education and other exceptions, to pay back some of their debt over the course of 3 or 5 years. It gives them even a break there.

When all is said and done, the means test in this bill will only result in about 1 in 10 individuals who file bankruptcy from ever having to pay some of their past debts with future earnings. So 10 percent of 100 percent will have to do some payback because they can afford to do it. It is only right. They should not saddle all America with their debts when they can afford to pay them back. But in the first markup, the man who is now the minority whip, my friend from Illinois, proposed the amendment that remains at the heart of the means test in this bill, and we accepted it.

What is amazing to me is that when my colleagues want to raise taxes they are always talking about how great the means test is. But when we want to make sure that people who can pay can pay, suddenly the means test is not a good test. You can't have it both ways. It is amazing to me. It is almost hypocrisy.

I am pleased that cloture has been invoked, giving us the opportunity to once again pass this bill. It is getting to the point where some might even forget why we initiated this legislation. We have been at it for 8 years now. Some of those who oppose the bill and are offering final postcloture amendments are flying in the face of years and years of hard work and bipartisan compromise. By the way, the ones who bring up the amendments will never vote for this bill no matter what you do, unless it is a complete cave-in, so we cannot solve the problems that are eating our country alive in bankruptcy. And they do it under the guise that they are trying to protect the weak and the infirm and those who really cannot help themselves.

Give me a break. We over here get so tired of those populist arguments. We hear them over and over and sometimes I think they think the more they yell and scream the more people must think their arguments are serious. I hope people are listening because, my gosh, after 8 years of compromising and working and bringing people together and listening to both sides and doing everything we can to accommodate, why do we have to go through all the same amendments over and over again; they have been defeated time and time again because they deserve being defeated. Yet it happens every time—they get up and act like the world is coming to an end because their populist rhetoric is not being listened to. Unfortunately, there are people out there who really believe this stuff when somebody starts yelling, screaming, and shouting on the Senate floor.

The fact is that many of these final amendments being proposed during this debate are just further adjustments of adjustments to adjustments that were already made during this process. We have made further adjustments and refinements when we found broad consensus. These amendments have been brought up postcloture.

You would think there would be a time when you admit that you have had your shot, you have had 8 years of your shot; you have had amendment after amendment, the same thing over and over again, and the amendments have been defeated. You would think sooner or later they would come to the conclusion to stop holding up the Senate and the people's business and let this bill go; we lost this bill even though we as liberals don't like it. But there are liberals who do like it because they know it is right. They know what we are trying to do here will work to the betterment of the bankruptcy laws of the country.

I would like to add that during the course of the floor debate over the last week and a half we accepted more amendments that will improve this bill.

The Senate agreed to the Sessions amendment that makes clear that bankruptcy judges must consider military and veteran status and health care costs when determining whether a portion of future income must be used to pay past debt.

The Sessions amendment addressed many of the issues presented by Senator DURBIN with respect to military personnel and veterans, and Senator KENNEDY with respect to health care costs.

We accepted the Specter amendment that made clear how bankruptcy judges will be paid through increased filing fees. This important amendment stands for responsible government and eliminates any objection to the legislation based on a budget point of order.

In addition, we adopted an important amendment by Senator LEAHY that corrects some potential problems that relate to privacy of certain personal information, including Social Security numbers.

In short, we have improved this bill on the floor in a number of important aspects. We have been open to our colleagues. We have tried to accommodate them where we can. But there are areas where we can't and have this bill became law.

I think that the cloture vote we just took is evidence of those changes to this already moderate legislation. I understand some Senators do not think they have had an adequate hearing. At the beginning of this process, I gave them my word to at least consider amendments from all sides, and I believe we have done so. This institution is rather unwieldy, though. I think anybody who watches it or thinks about it has to admit that. That is probably putting it mildly. Unfortunately, even decent arguments, if they come at the wrong time, are going to have an uphill climb.

As I said earlier, since I was first elected I have tried my best to reach out to the other side as a good-faith actor. That is no less true with this bankruptcy bill. I have listened to more proposals and voted on more amendments that I can recall, and so has Senator GRASSLEY and Senator SESSIONS and others who have worked so hard on this issue. My hope is that as we move forward the opposition remembers the bigger picture. Even those few Senators who will not vote for final passage know that this bill was made better because we have accepted their amendments over the years.

At this late date, though, it is difficult to accept many more for procedural reasons. I oppose the amendment offered by the distinguished Senator from Massachusetts for all of these substantive reasons.

Let me give a couple more substantive reasons. I accept Senator KENNEDY's argument that health care costs are the key factor in bankruptcy. I have heard that for days around here; that most people go into bankruptcy because of health care costs. Much of his argument stems from the so-called Warren study. Let me talk about the Warren study cited by Senator KENNEDY and give a response to it by the

Department of Justice. Here is what the Department of Justice said. I would suggest that the Warren study has been greatly overplayed here on the floor.

They said:

Professor Warren, a long-time opponent of bankruptcy reform, and her so-called ''studies,'' should be approached with skepticism.

Though Ms. Warren's study claims that more than half of consumer bankruptcies are medically related, the DOJ has told us that only ''the conclusion that almost 50 percent of consumer bankruptcies are 'medical related' requires a broad definition and is generally not substantiated by the official documents filed by debtors.''

In other words, this claim that 50 percent of the bankruptcies are caused by medical expenses is pure bull.

The means test doesn't apply to the poor or anyone without the ability to re-pay.

Anyone under the median income for their State is automatically exempt from the means test.

They can go right into chapter 7 and have every one of their debts removed; that is, the poor.

To the extent that ''above median'' families have ongoing medical expenses, they are permitted to use those expenses as a reason to not pay their debts. These are people above the median income level.

GAO's 1999 analysis of the expenses allowed under the means test clearly shows that the means test permits all debtors to account for health care expenses.

For people with repayment capacity and financial resources, the bankruptcy legislation prevents abuse by requiring some of their bills to repaid in exchange for not having to pay the full amount.

This is fair. If they can pay some, they ought to pay some. We shouldn't just stick the hospitals and the doctors and everybody in medical care with these unpaid debts.

I was talking to one of the large hospital chains the other day. I asked them how much uncompensated debt they had every year; in other words, medical care that you have given that you receive no compensation for. It was almost $1 billion a year that they have given in free medical care for the poor and for some who game the system. Guess who pays for that. You and I, and everybody else in the final analysis because it is going to have to come back in most cases to Medicaid and Medicare. These are Federal programs that wind up with those debts. By the way, we pay for them for a variety of reasons. We don't pay almost $1 billion to those hospitals. They don't get anything in most cases. That uncompensated debt means they are not getting paid. They are giving emergency care. That is why some hospitals are now doing away with emergency care facilities, because they can't keep doing it. People who do not pay their bills raise the cost of everything for all of us. That is OK when they can't pay their bills when they are poor. But when they can, and when they think they can just escape them by going into bankruptcy and they are capable of paying some or all of their bills, they ought to help to do it.

For people with repayment capacity and financial resources, the legislation prevents abuse by requiring some of the bills to be repaid in exchange for not having to pay the full amount.

If someone can't pay health care debts, the bill does not force them to. This bill will not force them to. If they can pay health care debts, they should repay those debts and those bills just like everybody else has.

The Sessions amendment we adopted last week addresses this problem. It simply addresses the problem.

Let me close by addressing the investment banker provision my colleague from Massachusetts has strenuously commented upon. I am not sure if strenuous is quite the word, but I will use that word here tonight. It seemed to me a little more than strenuous.

Companies in financial distress need the ability to retain good help. They need to be able to keep people on who know the company best and who will enable that company to emerge from reorganization a more healthy outfit that can continue providing for its employees and contribute to the economy.

Under current law, investment bankers alone among professionals in the business world were deemed, per se, interested persons who could not work for a company after filing for bankruptcy if they had served as banker for any outstanding security of the corporation. This bill simply extends the test, one of the materially adverse interests that applies to lawyers, accountants, and other professionals to investment bankers.

This amendment makes sense. It continues to provide the courts with discretion to exclude bankers from participation in a reorganization while giving companies more flexibility as they attempt to reorganize and save themselves.

The amendment under consideration would undo this flexibility by imposing a strict 5-year exclusion on participation by investment bankers. This makes little sense. I will be voting against the amendment. I urge my colleagues to do the same. I especially make the case that this is not special interest legislation, as my colleague says it is. This is a classic message amendment. The message we should send tomorrow is to vote ''no'' on this amendment. When we talk about message amendments, these are amendments that our colleagues know we cannot take for very good reasons, but they are trying to score political points with the Nation. Anyone who looks at these matters carefully and understands the law would say, let's not let these message amendments take over a good bill that can do so much good for our society. We then should vote ''yes'' on final passage because this is a good, balanced, bipartisan, bicameral bill.

What gets me down is I have heard these arguments for 8 solid years. Most of them do not make sense. Most of them are message arguments for political reasons by people who will never vote for this bill, basically have not helped bring this bill about, who have not cooperated in trying to bring both Houses together, who are not part of the huge bipartisan consensus on this bill, and who are trying to score political points, hoping we will never come on the floor and refute them.

I could not sit back and not come to the Senate tonight because we have to quit making political points. We ought to pass this bill so we can help this country and its people go forward in ways it should.

People who can pay their debts ought to. Companies that are doing wrong ought to pay for that. Where there is fraud, this bill will attack it.

We can go through so many good aspects of this bill. Could it be better? I have never seen a bill pass here of any magnitude that could not be improved. But we have had 8 years of improvements and this is the bill that will pass if we do not amend it. We should pass it. We should move forward from here.

Having said that, that does not mean we should not immediately start work on the next bankruptcy bill to see if there are ways we can improve even this. As this bill becomes law, we will find ways that it may not work as well as we contemplated and we ought to continually oversee this and make sure this bill works in the best interests of all Americans, that it works in the best interests of the poor, and the working people, our union men and women, people who have to make a living all over this country, and for investors and everybody else in our society. We ought to make sure we do the best we can. I assure you we will continue to try and work to continue to improve our laws in this country. That is what this body is all about.

I will briefly mention an important issue that arose from the amendment at the markup. This amendment offered by my friend from Massachusetts, Senator KENNEDY, seeks to prevent unfair and unnecessary retention bonuses to insiders in chapter 11 companies. The goal here is certainly laudable and I agree with the desire to try to do that, but it has come to light since our markup that this amendment may act to effectively prohibit responsible companies undergoing reorganization—in other words, trying to save themselves—from keeping key employees who may best be able to steer the company back into solvency.

I have a letter from the Association of Insolvency and Restructuring Advisors enumerating these concerns in further detail and I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASSOCIATION OF INSOLVENCY AND RESTRUCTURING ADVISORS,
March 1, 2005.

Sen. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The undersigned are financial and legal professionals who serve as the Board of Directors of the Association of Insolvency and Restructuring Advisors (AIRA). As board members we work to further the AIRA's goal of increasing industry awareness of the organization as an important educational and technical resource for professionals in business turnaround, restructuring, and bankruptcy practice, and of the Certified Insolvency and Restructuring Advisor (ClRA) designation as an assurance of expertise in this area.

We write to make you aware of serious concerns we have regarding a provision contained in S. 256, the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.'' The provision in question effectively prohibits the use of key employee retention plans in Chapter 11 reorganizations. It was added during the Judiciary Committee mark-up of the bill and elicited little attention at the time. However, we believe this provision will cause considerable harm to a number of companies that will become subject to bankruptcy proceedings, and, most importantly, to their employees, customers, and creditors.

When a company is operating in Chapter 11, a primary responsibility of management is to maintain and grow the company's value for the benefit of all of its stakeholders. A company that is well-managed through its restructuring benefits its creditors, employees, retirees, unions and the local communities of which the company is a part. Companies that fail to successfully reorganize in Chapter 11 are liquidated. Creditors receive pennies on the dollar and employees see their jobs and retirement savings destroyed.

When companies enter Chapter 11, it is critical that they attract and retain top management talent. But Chapter 11 is also the most difficult time to attract and retain such talent. Managers of Chapter 11 companies are faced with intense scrutiny, stress, insecurity, and an enormously complex process. Compensation and incentive tools used by non-bankrupt companies such as equity compensation programs are not available to assist with attracting and retaining the type of management talent necessary to bring the company successfully through the Chapter 11 process—this is because the pre-petition equity is almost always without value. Key employee retention plans (''KERPs'') have become common practice since the early 1990's and have been viewed by courts, debtors, and creditors alike as an important and useful way to help reorganization by retaining key employees.

Bankruptcy courts have agreed with this reasoning, and many judges have used their judicial discretion to approve KERPs. For a court to approve a KERP under existing law, however, a debtor must use proper business judgment in formulating the program, and the court must find the program to be reasonable and fair. Creditors have the right to object to proposed KERPs, and judges are presented with a full evidentiary record upon which to make a determination. If a KERP is not appropriate or if it is not in the best interest of the company's creditors, the judge can refuse to approve it.

In the last few years, there has been a trend, with which we agree, towards stricter judicial scrutiny of proposed KERPs by bankruptcy judges. Such a trend seems appropriate in the wake of numerous high profile bankruptcy filings where management's misconduct or mismanagement has led to the Chapter 11 filing. Judges have discretion to deny KERPs in these circumstances, and they do so when the facts and circumstances warrant.

Unfortunately, S. 256 as reported by the Senate Judiciary Committee includes an amendment authored by Senator Edward M. Kennedy (the Kennedy amendment) that places significant limits on retention bonuses and severance payments to employees of companies in Chapter 11. It would prohibit a bankruptcy judge from approving retention bonuses in every Chapter 11 case unless he or she finds that the company in question has proven that the employee has a bona fide job offer at the same or greater rate of compensation; was prepared to accept the job offer; and the services of that employee are ''essential to the survival of the business''. The amendment also places significant caps on the amount of such bonus and payments.

The Kennedy amendment appears to be motivated by a desire to combat KERPs in Chapter 11 cases where employee-related fraud substantially contributed to the bankruptcy of the company. Yet, by painting with such a broad brush, the Kennedy amendment will, if enacted, effectively eliminate all companies' ability to ever receive court approval for a KERP. Federal bankruptcy judges would have little or no discretion to approve KERPs. In turn, bankrupt companies would have less flexibility in trying to retain or attract necessary employees. This result will cause considerable harm to companies in bankruptcy, their employees, and their creditors.

It is apparent that the Kennedy amendment is designed to prevent abuses of the system, where creditors' employees' and retirees' monies are unnecessarily expended for the enrichment of management. Whether there currently is or is not sufficient judicial scrutiny of KERPs is a valid question, insofar as the overall bankruptcy system allows debtors a fair amount of flexibility in exercising reasonable judgment—but there must be an approach better than handcuffing the judiciary and stakeholders in bankruptcy cases by essentially precluding all use of KERPs. The proper use of KERPs requires an analysis of all facts and circumstances of the case, and not what is essentially a blanket proscription of these tools.

Senator Kennedy has advanced an important public policy discussion with his amendment. Managers who have had responsibility for driving a company into bankruptcy should not be paid a bonus to remain. Similarly, if the retention of an employee would not enhance a company's value for its stakeholders, they should not be paid a bonus to stay. Current law provides bankruptcy judges with the discretion necessary to deny a KERP in such circumstances and bankruptcy judges do deny KERP payments in these circumstances. Still, if the Congress wishes to improve the operation of current law while still safeguarding the ability of the courts to approve legitimate KERPs, we would welcome a discussion on how best to achieve that end. Unfortunately, S. 256, as reported by the Committee, goes too far and should be amended so as not to unnecessarily limit the bankruptcy court's ability to determine what is in the best interest of each individual bankruptcy estate.

Mr. Chairman, we thank you for considering our views on this important matter. We would be pleased to address any questions you or other members of the Committee on the Judiciary may have.

Sincerely,

The members of the board and management of the Association of Insolvency and Restructuring Advisors.

Soneet R. Kapila, CIRA, Kapila & Company; President, AIRA; James M. Lukenda, CIRA, Huron Consulting Group; Chairman, AIRA; Grant Newton, CIRA, Executive Director, AIRA; Daniel Armel, CIRA, Baymark Strategies LLC; Dennis Bean, CIRA, Dennis Bean & Company; Francis G. Conrad, CIRA, ARG Capital Partners LLP; Stephen Darr, CIRA, Mesirow Financial Consulting LLC; Louis DeArias, CIRA, PricewaterhouseCoopers LLP.

James Decker, CIRA, Houlihan Lokey Howard & Zukin; Mitchell Drucker, CIT Business Credit; Howard Fielstein, CIRA, Margolin Winer & Evens LLP; Philip Gund, CIR, Marotta Gund Budd & Dzera LLC; Gina Gutzeit, FTI Palladium Partners; Alan Holtz, CIRA, Giuliani Capital Advisors LLC; Margaret Hunter, CIRA, Protiviti Inc; Alan Jacobs, CIRA, AMJ Advisors LLC.

David Judd, Neilson Elggren LLP; Bernard Katz, CIRA J H Cohn LLP; Farley Lee, CIRA, Deloitte. Kenneth Lefoldt, CIRA, Lefoldt & Company; William Lenhart, CIRA, BDO Seidman LLP; Kenneth Malek, CIRA, Navigant Consulting Inc; J. Robert Medlin, CIRA, FTI Consulting Inc; Thomas Morrow, CIRA, AlixPartners LLC.

Michael Murphy, Mesirow Financial Consulting; LLC; Steven Panagos, CIRA, Kroll Zolfo Cooper LLC; David Payne, ClRA, D R Payne & Associates Inc; David Ringer, CIRA, Eisner LLP; Anthony Sasso, CIRA, Deloitte. Matthew Schwartz, CIRA, Bederson & Company LLP; Keith Shapiro, Esq. Greenberg Traurig LLP; Grant Stein, Esq., Alston & Bird LLP; Peter Stenger, CIRA, Stout Risius Ross Inc; Michael Straneva, CIRA, Ernst & Young LLP.

Mr. HATCH. We have language in this issue which would mitigate what I believe are unintended effects of this amendment. Under this modified language, all payments where ''misconduct, fraud, or mismanagement'' is present are prohibited. This language also keeps the burden on chapter 11 companies to prove that retention bonuses are ''necessary, fair and reasonable,'' and ''likely to enhance a successful reorganization.''

This seems like a reasonable fix to me and I hope we include this language in the bill. I appreciate any help my friend from Massachusetts would give on that particular issue because if we are interested in doing what is right, this will do what is right.

Mr. KOHL. Mr. President, I am in support of the Kennedy-Kohl amendment. It would eliminate the most flagrant abuse of the bankruptcy system under current law—the unlimited homestead exemption. This exemption allows debtors in five states to purchase expensive homes and shield millions of dollars from their creditors. All too often, millionaire debtors take advantage of this loophole by buying mansions in states with unlimited exemptions like Florida and Texas, and declaring bankruptcy and yet continue to live like kings. Our measure will generously cap the homestead exemption at $300,000—that is: it permits a debtor to keep $300,000 of equity in his or her home after declaring bankruptcy.

This amendment, with even lower threshold amounts, has been adopted

twice by the Senate by wide margins in the course of considering previous bankruptcy bills, in both the 106th and 107th Congresses. As a result of my efforts in the past bankruptcy debates, the underlying bill that we are debating already contains a provision on the homestead amendment that gets at the worst abusers of this loophole, including felons. In fact, it will be the first Federal law ever on the homestead exemption.

The provision included in the bill, however, while obviously better than the current law's allowance of an unlimited homestead exemption, is still not a comprehensive solution to the current abuses of the law. It would allow those who establish their residence in an unlimited homestead state more than 3 years and 4 months before a bankruptcy filing to shelter an unlimited amount of money in their residences. All it would take for a greedy or unscrupulous individual to take advantage of this provision to defraud his or her creditors is some planning and foresight. And it does nothing to stop lifelong residents of these states from taking advantage of the unlimited homestead exemption to protect their assets from creditors.

A review of a few examples in recent years show how willing disreputable debtors are to engage in such planning to hide their assets. Let me give you just a few of the many examples:

John Porter, WorldCom's cofounder and former Chairman, bought a 10,000 square-foot ocean front estate in Palm Beach, Florida in 1998, a home featured on the cover of the November 2004 issue of Luxury Homes magazine, and now worth nearly $17 million. The IRS says he owes more than $25 million for back taxes, and he is the defendant in several multi-million dollar securities fraud lawsuits resulting from the failure of WorldCom. Porter filed for bankruptcy in May 2004. Florida's homestead exemption allows Porter to keep most of the value of the house.

The former Executive Vice President of Conseco has sought to avoid repaying $65 million in loans from Conseco by selling 90% of her and her husband's assets and buying a $10 million home on Sunset Island in Miami Beach, FL.

In 2001, Paul Bilzerian—a convicted felon—tried to wipe out $140 million in debts and all the while holding on to his 37,000 square foot Florida mansion worth over $5 million—with its 10 bedrooms, two libraries, double gourmet kitchen, racquetball court, indoor basketball court, movie theater, full weight and exercise rooms, and swimming pool.

The owner of a failed Ohio Savings and Loan, who was convicted of securities fraud, wrote off most of $300 million in debts, but still held on to the multi-million dollar ranch he bought in Florida.

Movie star Burt Reynolds wrote off over $8 million in debt through bankruptcy, but still held onto his $2.5 million Florida estate.

Sadly, those examples are just the tip of the iceberg. Several years ago, we asked the GAO to study this problem. At that time, they estimated that 400 homeowners in Florida and Texas—all with over $100,000 in home equity—profited from this unlimited exemption each year. And while they continued to live in luxury, they wrote off an estimated $120 million owed to honest creditors. This is not only wrong; it is unacceptable.

In stark contrast, in most States debtors may keep only a reasonable amount of the equity they have in their homes. For example, in my home State of Wisconsin, when a person declares bankruptcy, he or she may keep only $40,000 of the value of their home. This permits creditors access to any additional funds that could be used to repay outstanding loans, yet allows the debtor to preserve $40,000 which is more than enough for a fresh start. Most States reasonably cap their homestead exemptions at $40,000 or less.

The bankruptcy reform bill is intended to wipe out abuse by debtors who run up large bills and then use the bankruptcy laws as a method of financial planning. Our amendment does exactly that.

Unlike the compromise version currently in S. 256, this amendment completely closes this inexcusable loophole that allows too many debtors to keep their luxury homes, while their legitimate creditors—like kids owed child support, ex-spouses owed alimony, state governments, small businesses and banks—get left out in the cold.

While the unlimited homestead exemption may not be the most common abuse of the bankruptcy system, it is clearly the most egregious. If we really want to restore the stigma attached to bankruptcy, these high profile cases are the best place to start.

In both the 106th and 107th Congresses, an overwhelming number of our colleagues agreed with us and voted to cap the homestead exemption by wide margins. In the 106th Congress, this proposal was adopted in the Senate by a vote of 76–22. In the 107th Congress, a motion to table this proposal was defeated in the Senate by a vote of 60 to 39, and this amendment was then adopted by voice vote. The vote this year is exactly the same as the one in the 106th and 107th Congresses. If you were against rich debtors avoiding their creditors the last two times, then you should be against rich debtors avoiding their creditors this time.

The simple hard cap that we propose with this amendment is not only the best policy; it also sends the best message: bankruptcy is a tool of last resort, not financial planning. Even though I would prefer that this amendment include an exemption for family farmers, it does address the need to go after the worst abusers, no matter how wealthy.

In closing, we should remember that one of the central principles of the bankruptcy bill is that people who can pay part of their debts should be required to do so. But the call to reform rings hollow when the bill creates an elaborate, taxpayer funded system to squeeze an extra $100 a month out of middle class debtors and yet allows people like Burt Reynolds to declare bankruptcy, wipe out $8 million in debt, and still hold on to a $2.5 million Florida mansion. I urge my colleagues to support this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I ask unanimous consent that all time be considered as expired under rule XXII with respect to the pending bill; I further ask consent that at 11 a.m. tomorrow the Senate proceed to a series of votes in relation to the following amendments; I further ask consent there be 2 minutes equally divided for debate prior to all votes in the series: Kennedy, No. 70; Kennedy, No. 69; Akaka, No. 105.

I further ask consent that on Thursday, at a time determined by the majority leader after consultation with the Democratic leader, the Senate proceed to votes in relation to the following amendments: Leahy 83; Durbin 112; Feingold 90; Feingold 92; Feingold 93; Feingold 95; Feingold 96; Schumer second-degree amendment numbered 129; Talent No. 121.

I further ask unanimous consent that amendments Nos. 87 and 91 be agreed to en bloc with the motion to reconsider laid upon the table; provided further that all other pending amendments—Nos. 45, 50, 52, 53, 72, 71, 88, 94, 97, 98, 99, 100, 101, and 119—be withdrawn and no further amendments be in order other than the possibility of a further Talent second degree which has been filed and a managers' amendment which has been cleared by both leaders.

I finally ask unanimous consent that following the disposition of the above amendments, the bill be read a third time and the Senate proceed to a vote on passage of the bill, with no further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the RECORD today pursuant to section 304(b)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384 (b)(3)).

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 8, 2005.

Hon. TED STEVENS,
President pro tempore, U.S. Senate, the Capitol, Washington, DC.

DEAR SENATOR STEVENS: Section 304(b)(3) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(l), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

The Board of Directors of the Office of Compliance has adopted the proposed regulations in the Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval which accompany this transmittal letter. The Board requests that the accompanying Notice be published in both the House and Senate versions of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. The Board also requests that Congress approve the proposed Regulations, as further specified in the accompanying Notice.

Any inquiries regarding the accompanying Notice should be addressed to William W. Thompson II, Executive Director of the Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9250, TDD 202–426–1912.

Sincerely,

SUSAN S. ROBFOGEL,
Chair of the Board of Directors.

OFFICE OF COMPLIANCE

NOTICE OF ADOPTION OF SUBSTANTIVE REGULATIONS, AND SUBMISSION FOR CONGRESSIONAL APPROVAL.

Proposed Replacement of the Office of Compliance Regulations implementing exemptions from the overtime pay requirements under the Fair Labor Standards Act of 1938 (FLSA).

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking: On September 29, 2004, the Board of Directors of the Office of Compliance issued a **Notice of Proposed Rulemaking** in the Congressional Record at 150 Cong. Rec. S9917 (daily ed.), and at 150 Cong. Rec. H7850 (daily ed.). The Notice of Proposed Rulemaking was prompted by the promulgation by the Secretary of Labor, effective August 23, 2004, of amended regulations regarding various exemptions from the overtime pay requirements of the FLSA. ***See: Federal Register, Vol. 69, No. 79 (August 23, 2004).***

Why did the Board propose these new Regulations? Section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), requires that the Board of Directors propose substantive regulations implementing the FLSA overtime requirements which are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulation would be more effective for the implementation of the rights and protections under this section."

What procedure followed the Board's initial September 29, 2004 Notice of Proposed Rulemaking?
The September 29, 2004 Notice of Proposed Rulemaking included a **thirty day comment period**, which began on September 30, 2004. A number of comments to the proposed substantive regulations were received by the Office of Compliance from interested parties. The Board of Directors has reviewed the comments from interested parties, made a number of changes to the proposed substantive regulations in response to comments, and has adopted the amended regulations.

What is the effect of the Board's "adoption" of these proposed substantive regulations? Adoption of these substantive regulations by the Board of Directors does not complete the promulgation process. Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors issue proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record* (the September 29 Notice); (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; and (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*. This **Notice of Adoption of Substantive Regulations and Submission for Congressional Approval** completes the third step described above.

What are the next steps in the process of promulgation of these regulations? Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to "include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution." The Board of Directors recommends that the procedure used in 1996 be used to adopt these proposed overtime exemption regulations: that the House of Representatives adopt the "H" version of the regulations by resolution; that the Senate adopt the "S" version of the regulations by resolution; and that the House and Senate adopt the "C" version of the regulations applied to the other employing offices by a concurrent resolution.

Are there regulations covering overtime exemptions currently in force under the CAA? Yes. Unless and until the House of Representatives and the Senate adopt these regulations, all employing offices and covered employees continue to be required to follow the existing Part 541 Regulations which were proposed by the Board of Directors and adopted by the House of Representatives and the Senate.

If adopted, will these regulations completely replace the existing Part 541 overtime exemption regulations applicable under the CAA? Yes.

The Board's Responses to Comments

As the result of the September 29, 2004 Notice of Proposed Regulations, and the ensuing 30 day comment period, the Office received comments from various interested parties. The Board has reviewed all comments, and has deliberated regarding the question whether comments establish "good cause" pursuant to section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), for varying the Office of Compliance proposed regulations from the Department of Labor regulations. The following discussion outlines the comments, and the Board's response to them.

What changes from the regulations as proposed on September 29, 2004 have been made by the Board in response to comments received from interested parties?

Removal of private sector terminology: Several commenters pointed out that reference to such terms as "business" and "enterprise" throughout the proposed regulations should be replaced by "employing office." The Board agreed with this suggestion in part. Certain provisions of the proposed regulations of general applicability have been amended to replace terms such as "business" or "enterprise" with the term "employing office." However, other provisions, particularly those which refer to "business operations," a term relating to ubiquitous operational functions such as accounting, auditing, procurement, personnel management and the like, or those references which are descriptive or exemplary have not been so amended, since to do so would detract from the clarity of the reference.

Sec. 541.0: Commenters correctly pointed out that a principal statutory authority for adoption of these regulations was not included in the proposed regulations. Therefore, a reference was added citing section 225(f)(1) of the CAA (2 U.S.C. 1361(f)(1)) as authority for the promulgation of these overtime exemption rules. Commenters also noted that the reference in the proposed regulation to "enforcement" by the Office of Compliance of the equal pay provision found at section 6(d) of the FLSA reflected an authority not given to the Office under the CAA. The Office of Compliance is authorized to administer the dispute resolution process for employee claims of a violation of the equal pay requirement at section 6(d) of the FLSA, but not to engage in its own self-initiated enforcement of the provision. Therefore, the reference to "enforcement" of section 6(d) was deleted.

Sec. 541.1: A commenter suggested that a reference to the existing regulation which defines the term "intern" be added to the exemption regulations. The Board concurs with the comment. Therefore, a reference was added to the definition of "intern" found at section 501.102(h) of the existing FLSA regulations of the Office of Compliance.

Section 541.4: Several commenters pointed out that the proposed section maintained an erroneous requirement that employing offices must comply with " . . .State or municipal laws, regulations, or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA" as applied via the CAA. The Board concurs with the comment. That requirement has been deleted from the proposed regulation.

What changes to the proposed substantive regulations suggested by commenters were not made by the Board of Directors? The Board of Directors reviewed all suggestions included in comments pursuant to the statutory requirement that the regulations "shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." (section 203(c)(2) of the CAA, 2 USC 1313(c)(2)). If the Board declined to adopt a suggestion, it determined that there was not good cause for such a change in implementing the FLSA.

Alleged "irrelevant" regulations: Commenters broadly suggested that portions of the proposed regulations which arguably do not directly concern types or categories of employment found among employees covered by the CAA should be deleted from the proposed regulations. These commenters urged that references to such employment categories as "outside

salespersons," "non-Federal employees in American Samoa," "insurance claims adjusters," work in a "factory," etc. should be entirely removed. Several of these commenters also suggested that substantively distinct sets of new regulations be developed for the House of Representatives, the Senate, and the other employing offices, based upon the differences among the types of employees who work in each body or agency.

The Board of Directors has been aware since its initial preparation of these proposed regulations that many of the job classifications and types of work processes treated in Part 541 are probably not found within the Legislative Branch of the Federal Government, that there may be job categories in the Legislative Branch not directly reflected in Part 541, and that there are differences among the work forces in the several employing offices covered by the CAA. However, the Board has concluded that adding or removing exemplary and descriptive provisions from the regulations as applied to all employing offices would reflect a basic misunderstanding of the purpose and goal of the new Part 541 of 29 CFR, and of the Congressional mandate in the CAA that the Board issue regulations based upon the Secretary of Labor's regulations promulgated for the private sector (See section 203(c)(2) of the CAA, 2 USC 1313(c)(2)).

While the Labor Department's "old," i.e. pre-2004, Part 541 overtime exemption regulations included a great deal of descriptive material, it was not binding, since almost all of the descriptive portions of 29 CFR Part 541 (Subpart B) were merely "interpretive" explanatory bulletins. Thus, the 1996 Part 541 regulations adopted by the Board of Directors and promulgated by Congress under the CAA did not include any of the Labor Department's interpretive regulations, since those interpretive regulations had not been formally promulgated under the Administrative Procedures Act.

In revamping Part 541, the Secretary of Labor explained that the Labor Department intended to "eliminate this distinction between the formal 'regulations' in Subpart A and the 'interpretations' in Subpart B. . . . This proposed restructuring of Part 541 was intended to consolidate and streamline the regulatory text, . . . make the regulations easier to understand and decipher when applying them to particular factual situations, and eliminate the confusion regarding the appropriate level of deference to be given to the provisions of each subpart." (69 Fed. Reg. 22126 (4/23/04)). While the new Part 541 does not directly discuss every conceivable employment situation, it does provide a broad sample of authoritative exemplary and descriptive material for many types of employers.

The key concept for purposes of explaining the Board's decision not to delete seemingly "irrelevant" descriptive and exemplary material is the intent of the new Labor Department regulations to make the tests for exemption "easier to understand and decipher when applying them to particular factual situations." No single employer or group of employers subject to the Part 541 regulations in the private sector employs all or even most of the categories of employees referenced in Part 541. However, the new Part 541 regulations for the first time provide a wealth of authoritative exemplary and descriptive material which can assist employers and employees to discern whether a particular position or job is exempt. The usefulness of this material does not depend upon the direct applicability of each and every provision of the regulations to each and every position or job.

The Board of Directors has concluded that employing offices and employees covered by the CAA should be accorded the same opportunity to utilize the full wealth of descriptive and exemplary material in the new Part 541 regulations as has been accorded employers and employees in the private sector. Any effort to carve this integrated body of regulations into segments which only refer to employment categories presently included within each category of employing office under the CAA would not only subvert the overall integration of Part 541, but prove to be enormously difficult in implementation.

References to "business," "enterprise," or other private sector employer categories. Several commenters suggested that all references in the proposed regulations to private enterprise concepts be replaced by terms derived from the CAA or governmental parlance. The proposed regulations have addressed the commenters' concern through language in section 541.1, which includes the stipulation that "Employer, company, business, enterprise, or public agency each mean an "employing office" as defined in section 101(9) of the CAA, 2 USC 1301(9)." However, reference to such "private sector" concepts in descriptive or exemplary regulations have not been excised, because to do so could well blunt the clarity or usefulness of the description or example. Whether or not specific work processes or functions as described in the proposed regulations are applicable directly or by analogy to a particular "employing office" are questions of fact for CAA employing offices and covered employees, just as for all other categories of employers and employees covered by the Labor Department regulations, including State and local governments.

Various FLSA overtime rules for "police officers" should not apply to police officers employed by the United States Capitol Police. One commenter asserted that the new proposed regulation establishing exceptions for the application of the FLSA section 13(a)(1) exemption tests for police officers and other public safety employees at proposed section 541.3(b) should not apply to members of the United States Capitol Police in those categories because the work performed by the United States Capitol Police is not "traditional police work performed by most state and local organizations." Rather, the commenter asserted the "unique nature of the USCP work as an organization charged with providing comprehensive and fully integrated security services which includes physical security and counter-terrorism components as well as a personal protective function, all requiring full and robust participation in the intelligence community." The commenter also noted that some members of the Capitol Police perform office and non-manual work.

The Board has carefully considered the assertion that the Capitol Police force is unique among all law enforcement agencies otherwise covered by Part 541 of the Department of Labor Regulations. The Board takes administrative notice that other major law enforcement agencies, such as the Uniformed Division of the Secret Service, District of Columbia Metropolitan Police, and many other large urban police forces, and police forces charged with security of state and local government premises and officials, are charged with providing security services, counter-terrorism capabilities, personal protective services, participation in the intelligence community, and include employees who perform office and non-manual work. While the relative emphasis and extent of any one or another such function may vary among such law enforcement agencies, the Board has concluded that the United States Capitol Police operation is not unique in any or all of these dimensions of law enforcement work. Therefore, the Board has determined that there is not "good cause" for exempting the members of the United States Capitol Police from the

application of section 541.3(b) of the proposed substantive regulations.

Reference to section 13(a)(1) of the FLSA "as amended." A commenter asserted that the phrase "as amended" in referencing section 13(a)(1) of the FLSA, 29 USC 213(a)(1), in the proposed substantive regulation is in error. The commenter asserted that the reference to laws being applied via the CAA is a "specific reference," and further asserted that canons of statutory construction therefore require that the referenced statute can only be applied as it existed as of the date of the reference. Therefore, said the commenter, subsequent amendments to CAA referenced laws such as the FLSA would not apply under the CAA. The commenter also asserted that the CAA's waiver of sovereign immunity of the United States did not include a waiver with regard to subsequent amendments to the laws applied via the CAA. In other words, the commenter argued that the statutes applied to Congress and the Legislative Branch via the CAA are "frozen" as they existed in 1995. The Board does not respond to the commenter's suggested interpretation of the CAA at this time, because section 13(a)(1) of the FLSA has not been amended since the CAA was enacted.

Inclusion of interns for purposes of establishing supervisory status under section 541.104. One commenter pointed out that interns (as defined in section 501.102(h) of the Office's FLSA regulations) are not "covered employees" for purposes of the CAA, but suggested that interns be counted as "employees" for purposes of application of the "direct the work of two or more other employees" test at section 541.104 of the proposed regulations. At the direction of the Board, the Office of Compliance inquired of the Department of Labor whether the Department interprets the term "employee" in regulation 541.104 to include individual workers who are not "employees" as defined under the balance of Part 541. The Labor Department responded informally that such workers are not counted as "employees" for purposes of the application of section 541.104 of the regulations. The Board has concluded that there is no good cause for varying from that practice under these proposed regulations, and has declined to include interns as "employees" for the purpose of section 541.104.

Members of the House of Representatives and Senators are not "covered employees" for purposes of the CAA. One commenter concluded that Members of the House of Representatives are not "covered employees." Rather than limit the response to this comment to the House of Representatives, the Board has reviewed the issue both with regard to Members of the House of Representatives and Senators. The Board has concluded that Members of the House and Senators are "covered employees" for purposes of the application of the CAA. An "employee of the House of Representatives" is defined at section 101(7) to include "an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives . . . ." 2 USC 1301(7). The pay of Members of the House is disbursed by the Chief Administrative Officer of the House of Representatives. An "'employee of the Senate' includes any employee whose pay is disbursed by the Secretary of the Senate . . . ." The pay of Senators is disbursed by the Secretary of the Senate. Therefore, both Members of the House and Senators are "covered employees" for the purposes of applicability of these proposed regulations. However, Members of the House and Senators are also clearly identified at section 541.1 of the proposed regulations as exempt "senior executives" for purposes of the application of overtime eligibility.

Additional General Information

Why are there separate sets of existing FLSA regulations which have been applicable since 1996 for the House of Representatives, the Senate, and the other employing offices covered by the CAA? Section 304(a)(2)(B) of the CAA, 2 U.S.C. 1384(a)(2)(B), requires that the substantive rules of the Board of Directors of the Office of Compliance "shall consist of 3 separate bodies of regulations, which shall apply, respectively, to - (i) the Senate and employees of the Senate; (ii) the House of Representatives and employees of the House of Representatives; and (iii) the other covered employees and employing offices." In 1996, the House of Representatives (H.Res.400) and the Senate (S.Res.242) each adopted by resolution the FLSA regulations applicable to each body. The Senate and House of Representatives adopted by concurrent resolution (S.Con.Res.51) the regulations applicable to other employing offices and employees.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. While there are some differences in other parts of the existing FLSA regulations applicable to the Senate, the House of Representatives, and the other employing offices (chiefly related to the mandate at section 203(c)(3) of the CAA, 2 U.S.C. 1313(c)(3), regarding "covered employees whose work schedules directly depend on the schedule of the House of Representatives or the Senate . . ."), the existing Part 541 regulations are substantively identical. The Board of Directors has identified no "good cause" for varying the text of these proposed new regulations. Therefore, if the proposed part 541 regulations are adopted to replace the pre-existing Part 541 regulations, the prefixes "H," "S," and "C" will be affixed to each of the sets of regulations for the House, for the Senate, and for the other employing offices, but otherwise the text of the part 541 regulations will be identical.

How does the Board of Directors recommend that Congress approve these proposed regulations? Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to "include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution." The Board of Directors recommends that the procedure used in 1996 be used to adopt these proposed overtime exemption regulations: the House of Representatives adopted the "H" version of the regulations by resolution; the Senate adopted the "S" version of the regulations by resolution; and the House and Senate adopted the "C" version of the regulations applied to the other employing offices by a concurrent resolution.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations have also been recommended by the Executive Director and Deputy Executive Directors of the Office of Compliance.

Are these proposed CAA regulations available to persons with disabilities in an alternate

format? This Notice of Adoption of Substantive Regulations, and Submission for Congressional Approval is available on the Office of Compliance web site, www. Compliance. gov which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202-724-9250; TDD: 202-426-1912; FAX: 202-426-1913.

How To Read The Proposed Amendments

In order to make comparison of these regulations with the regulations promulgated by the Secretary of Labor, the text of the proposed regulations reproduces the text of the regulations promulgated on August 23, 2004 by the Secretary of Labor at 29 CFR Part 541, and shows changes proposed for the CAA version of these same regulations. Changes adopted by the Board of Directors of the Office of Compliance are shown as follows: *[]*deletions within italicized brackets*]], and added text in italicized bold.* Further changes adopted by the Board in response to comments regarding the initial proposed regulations as issued on September 29, 2004 by the Board *are bolded, italicized, and underlined.* Therefore, if these regulations are approved as proposed, *[[bracketed text will disappear from the regulations]], and added text will remain.* If these regulations are approved for the House of Representatives by resolution of the House, they will be promulgated with the prefix "H" appearing before each regulations section number. If these regulations are approved for the Senate by resolution of the Senate, they will be promulgated with the prefix "S" appearing before each regulations section number. If these regulations are approved for the other employing offices by joint or concurrent resolution of the House of Representatives and the Senate, they will be promulgated with the prefix "C" appearing before each regulations section number.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104-1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 12 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

TEXT OF PROPOSED OVERTIME EXEMPTION REGULATIONS

as adopted by the Board of Directors of the Office of Compliance.

NOTE: As and when approved by the House of Representatives and/or the Senate, these proposed regulations will entirely replace the current Part 541 regulations which were promulgated by the Office of Compliance and approved by the House of Representatives and the Senate in 1996. Until new Part 541 regulations are approved by the House of Representatives and/or the Senate, the 1996 regulations regarding overtime exemptions remain in full force and effect.

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix "H." When approved by the Senate for the Senate, these regulations will have the prefix "S." When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix "C."

PART 541--DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

Subpart A--General Regulations Sec.

Authority: 29 U.S.C. 213;[[Public Law 101-583, 104 Stat. 2871]]; ***2 U.S.C. 203; 2 U.S.C. 304.*** [[Reorganization Plan No. 6 of 1950 (3 CFR 1945-53 Comp. p. 1004); Secretary's Order No. 4-2001 (66 FR 29656).]]

Subpart A--General Regulations

Sec. 541.0 Introductory statement. (a) Section 13(a)(1) of the Fair Labor Standards Act **(Act)**, as amended, ***and as applied pursuant to sections 203 and 225(f)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1313 and 1361(f)(1),*** provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee.*[[*, [[as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act.]] Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees. (b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions. (c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are **also** administered *[[*and enforced*]]* by the [[United States Equal Employment Opportunity Commission]] ***Office of Compliance.***

Sec. 541.1 Terms used in regulations. Act means the Fair Labor Standards Act of 1938, as amended. [[Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor

Standards Act.]] ***CAA means Congressional Accountability Act of 1995, as amended. Office means the Office of Compliance. Employee means a "covered employee" as defined in section 101 (3) through (8) of the CAA, 2 U.S.C. 1301(3) through (8), but not an "intern" as defined in section 203(a)(2) of the CAA, 2 U.S.C. 1313(a)(2), and in section 501.102(h) of the FLSA implementing regulations of the Office of Compliance. Employer, company, business, enterprise, or public agency each mean an "employing office" as defined in section 101(9) of the CAA, 2 U.S.C. 1301(9). Senior executive includes but is not limited to a Member of the House of Representatives or a Senator***

Sec. 541.2 Job titles insufficient. A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

Sec. 541.3 Scope of the section 13(a)(1) exemptions.
(a) The section 13(a)(1) exemptions and the regulations in this part do not apply to manual laborers or other ``blue collar'' workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt ``blue collar'' employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archeologists. Thus, for example, non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the Fair Labor Standards Act, and are not exempt under the regulations in this part no matter how highly paid they might be.

(b)(1) The section 13(a)(1) exemptions and the regulations in this part also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.
(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the ***[[***enterprise***]] employing office*** in which the employee is employed or a customarily recognized department or subdivision thereof as required under Sec. 541.100. Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under Sec. 541.200.
(4) Such employees do not qualify as exempt professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as required under Sec. 541.300. Although some police officers, fire fighters, paramedics, emergency medical technicians and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in such occupations.

Sec. 541.4 Other laws and collective bargaining agreements. The Fair Labor Standards Act provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any ***applicable*** Federal ***[[***, State or municipal***]]*** laws***[[***, regulations or ordinances***]]*** establishing a higher minimum wage or lower maximum workweek than those established under the Act. Similarly, employers, on their own initiative or under a collective bargaining agreement with a labor union, are not precluded by the Act from providing a wage higher than the statutory minimum, a shorter workweek than the statutory maximum, or a higher overtime premium (double time, for example) than provided by the Act. While collective bargaining agreements cannot waive or reduce the Act's protections, nothing in the Act or the regulations in this part relieves employers from their contractual obligations under collective bargaining agreements.

Subpart B--Executive Employees

Sec. 541.100 General rule for executive employees.
(a) The term ``employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (2) Whose primary duty is management of the ***[[***enterprise***]] employing office*** in which the employee is employed or of a customarily recognized department or subdivision thereof; (3) Who customarily and regularly directs the work of two or more other employees; and (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.
(b) The phrase ``salary basis'' is defined at Sec. 541.602; ``board, lodging or other facilities'' is defined at Sec. 541.606; ``primary duty'' is defined at Sec. 541.700; and ``customarily and regularly'' is defined at Sec. 541.701.

Sec. 541.101 Business owner. The term ``employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act also includes any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The term ``management'' is defined in Sec. 541.102. The requirements of Subpart

G (salary requirements) of this part do not apply to the business owners described in this section.

Sec. 541.102 Management. Generally, ``management'' includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Sec. 541.103 Department or subdivision. (a) The phrase ``a customarily recognized department or subdivision'' is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function. (b) When an ***[[***enterprise***]]*** ***employing office*** has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the ***[[***enterprise***]] employing office***. (c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization. (d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

Sec. 541.104 Two or more other employees. (a) To qualify as an exempt executive under Sec. 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase ``two or more other employees'' means two full-time employees or their equivalent. One full-time and two half- time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. (b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers. (c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. (d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the

same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

Sec. 541.105 Particular weight. To determine whether an employee's suggestions and recommendations are given ``particular weight,'' factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have ``particular weight'' even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

Sec. 541.106 Concurrent duties.
(a) Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements of Sec. 541.100 are otherwise met. Whether an employee meets the requirements of Sec. 541.100 when the employee performs concurrent duties is determined on a case-by-case basis and based on the factors set forth in Sec. 541.700. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.
(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.
(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Subpart C--Administrative Employees

Sec. 541.200 General rule for administrative employees.
a) The term ``employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less

than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
(b) The term ``salary basis'' is defined at Sec. 541.602; ``fee basis'' is defined at Sec. 541.605; ``board, lodging or other facilities'' is defined at Sec. 541.606; and ``primary duty'' is defined at Sec. 541.700.

Sec. 541.201 Directly related to management or general business operations.
(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase ``directly related to the management or general business operations'' refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the ***[[***business***]] employing office***, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.
(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.
(c) An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

Sec. 541.202 Discretion and independent judgment.
(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ``matters of significance'' refers to the level of importance or consequence of the work performed.
(b) The phrase ``discretion and independent judgment'' must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the ***[[***business***]] employing office***; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of

a particular segment of the [[business]] ***employing office***; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the [[company]] ***employing office*** on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term [[business]] objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the [[company]] ***employing office*** in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term ``discretion and independent judgment'' does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of [[business]] ***work*** may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also Sec. 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a ``statistician.''

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer. Sec. 541.203 Administrative exemption examples.

(a) Insurance claims adjusters generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties

include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(b) Employees in the financial services industry generally meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. However, an employee whose primary duty is selling financial products does not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret or implement employment policies and management consultants who study the operations of a business and propose changes in organization generally meet the duties requirements for the administrative exemption. However, personnel clerks who ``screen'' applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not meet the duties requirements for the administrative exemption. Such personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum standards are usually set by the exempt human resources manager or other company officials, and the decision to hire from the group of qualified applicants who do meet the minimum standards is similarly made by the exempt human resources manager or other company officials. Thus, when the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well- established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, generally do not meet the duties requirements for the administrative exemption. Such employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards does not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.
(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store does not qualify for the administrative exemption. However, the buyer who evaluates such reports on competitor prices to set the employer's prices generally meets the duties requirements for the administrative exemption.
(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists and similar employees, generally do not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. Such employees also do not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

Sec. 541.204 Educational establishments.
(a) The term ``employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act also includes employees: (1) Compensated for services on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and (2) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.
(b) The term ``educational establishment'' means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curriculums in secondary education. The term ``other educational establishment'' includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.
(c) The phrase ``performing administrative functions directly related to academic instruction or

training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.
(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and other employees with similar responsibilities.
(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under Sec. 541.200 or under other sections of this part, provided the requirements for such exemptions are met.

Subpart D--Professional Employees

Sec. 541.300 General rule for professional employees.
(a) The term ``employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and (2) Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
(b) The term ``salary basis" is defined at Sec. 541.602; ``fee basis" is defined at Sec. 541.605; ``board, lodging or other facilities" is defined at Sec. 541.606; and ``primary duty" is defined at Sec. 541.700.

Sec. 541.301 Learned professionals.
(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements: (1) The employee must perform work requiring advanced knowledge; (2) The advanced knowledge must be in a field of science or learning; and (3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
(b) The phrase ``work requiring advanced knowledge" means work which is predominantly

intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

(c) The phrase ``field of science or learning'' includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase ``customarily acquired by a prolonged course of specialized intellectual instruction'' restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ``customarily'' means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

(e) (1) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption. (2) Nurses. Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations. (3) Dental hygienists. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption. (4) Physician assistants. Physician assistants who have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants generally meet the duties requirements for the learned professional exemption. (5) Accountants. Certified public

accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals. (6) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work. (7) Paralegals. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption. (8) Athletic trainers. Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification of the National Athletic Trainers Association Board of Certification generally meet the duties requirements for the learned professional exemption. (9) Funeral directors or embalmers. Licensed funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

(f) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in paragraphs (e)(1), (e)(3), (e)(4), (e)(8) and (e)(9) of this section also may be created in the future. Such organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

Sec. 541.302 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be ``in a recognized field of artistic or creative endeavor.'' This includes such fields as music, writing,

acting and the graphic arts.
(c) The requirement of ``invention, imagination, originality or talent'' distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Determination of exempt creative professional status, therefore, must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen-play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an ``animator'' of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.
(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent, as opposed to work which depends primarily on intelligence, diligence and accuracy. Employees of newspapers, magazines, television and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters also do not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. However, journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns or other commentary; or acting as a narrator or commentator.

Sec. 541.303 Teachers.
(a) The term ``employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term ``educational establishment'' is defined in Sec. 541.204(b).
(b) Exempt teachers include, but are not limited to: Regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi- skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.
(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching

professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.
(d) The requirements of Sec. 541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

Sec. 541.304 Practice of law or medicine.
(a) The term ``employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also shall mean: (1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and (2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.
(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term ``physicians'' includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).
(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.
(d) The requirements of Sec. 541.300 and subpart G (salary requirements) of this part do not apply to the employees described in this section.

Subpart E--Computer Employees

Sec. 541.400 General rule for computer employees.
(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.
(b) The section 13(a)(1) exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, and the section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate not less than $27.63 an hour. In addition, under either section 13(a)(1) or section 13(a)(17) of the Act, the exemptions apply only to computer employees whose primary duty consists of: (1) The application of systems analysis techniques and procedures, including

consulting with users, to determine hardware, software or system functional specifications; (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) A combination of the aforementioned duties, the performance of which requires the same level of skills.
(c) The term ``salary basis'' is defined at Sec. 541.602; ``fee basis'' is defined at Sec. 541.605; ``board, lodging or other facilities'' is defined at Sec. 541.606; and ``primary duty'' is defined at Sec. 541.700.

Sec. 541.401 Computer manufacture and repair. The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in Sec. 541.400(b), are also not exempt computer professionals.

Sec. 541.402 Executive and administrative computer employees. Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

Subpart F--Outside Sales Employees

Sec. 541.500 General rule for outside sales employees. (a) The term ``employee employed in the capacity of outside salesman'' in section 13(a)(1) of the Act shall mean any employee: (1) Whose primary duty is: (i) making sales within the meaning of section 3(k) of the Act, or (ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and (2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.
(b) The term ``primary duty'' is defined at Sec. 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences.

(c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

Sec. 541.501 Making sales or obtaining orders.
(a) Section 541.500 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) Obtaining orders or contracts for services or for the use of facilities.
(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that ``sale'' or ``sell'' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.
(c) Exempt outside sales work includes not only the sales of commodities, but also ``obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.'' Obtaining orders for ``the use of facilities'' includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.
(d) The word ``services'' extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Sec. 541.502 Away from employer's place of business. An outside sales employee must be customarily and regularly engaged ``away from the employer's place or places of business.'' The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business. Similarly, an outside sales employee does not lose the exemption by displaying the employer's products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one or two weeks) should not be considered as the employer's place of business.

Sec. 541.503 Promotion work.
(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work. An employee who does not satisfy the requirements of this subpart may still qualify as an exempt employee under other subparts of this rule.
(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an

exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt outside sales work.
(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is not exempt outside sales work.

Sec. 541.504 Drivers who sell.
(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of drivers who sell, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving or delivering products, shall be regarded as exempt outside sales work.
(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including, but not limited to: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.
(c) Drivers who may qualify as exempt outside sales employees include: (1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold. (2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases. (3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods. (4) A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.
(d) Drivers who generally would not qualify as exempt outside sales employees include: (1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations. (2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery. (3) A driver primarily engaged in making deliveries to customers and performing activities intended to

promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G--Salary Requirements

Sec. 541.600 Amount of salary required.
(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in Sec. 541.605.
(b) The $455 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $910, semimonthly on a salary basis of $985.83, or monthly on a salary basis of $1,971.66. However, the shortest period of payment that will meet this compensation requirement is one week.
(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in Sec. 541. 204(a)(1).
(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in Sec. 541. 400(b).
(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (see Sec. 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see Sec. 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see Sec. 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

Sec. 541.601 Highly compensated employees.
(a) An employee with total annual compensation of at least $100,000 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part.
(b) (1) ``Total annual compensation'' must include at least $455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in Sec. 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits. (2) If an employee's total annual

compensation does not total at least the minimum amount established in paragraph (a) of this section by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, an employee may earn $80,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $20,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $10,000 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C or D of this part. (3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (b)(2) of this section within one month after the end of employment. (4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee will qualify for exemption if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under Sec. 541.100.

(d) This section applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non- management production-line workers and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section no matter how highly paid they might be.

Sec. 541.602 Salary basis.

(a) General rule. An employee will be considered to be paid on a ``salary basis'' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a

salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Exceptions. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions: (1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence. (2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law. (3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption. (4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines. (5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence. (6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a

proportionate part of the weekly salary when so employed. (7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

Sec. 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions, if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in Sec. 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the

improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.
(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

Sec. 541.604 Minimum guarantee plus extras.
(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.
(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary of $650 per week who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

Sec. 541.605 Fee basis.
(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a ``fee basis'' within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a ``fee'' is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.
(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by

determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $455 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

Sec. 541.606 Board, lodging or other facilities.
(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in Sec. 541.600, ``exclusive of board, lodging or other facilities.'' The phrase ``exclusive of board, lodging or other facilities'' means ``free and clear'' or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.
(b) Regulations defining what constitutes ``board, lodging, or other facilities'' are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term ``other facilities'' refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work. **[[*NOTE:* There is good cause for the inclusion of subsection (b): The regulations referenced in this paragraph at 29 CFR 531.29 are not substantive regulations, but are "interpretive" regulations which were not incorporated in Part 531 of the CAA regulations adopted in 1996. However, the Board of Directors has determined that, since these particular interpretive regulations are incorporated by reference in the new substantive regulations, employing offices and employees may reference these particular interpretive regulations as part of the new substantive regulations as proposed here.]]**

Subpart H--Definitions and Miscellaneous Provisions

Sec. 541.700 Primary duty.
(a) To qualify for exemption under this part, an employee's ``primary duty'' must be the performance of exempt work. The term ``primary duty'' means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.
(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than

50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.
(c) Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement.

Sec. 541.701 Customarily and regularly. The phrase ``customarily and regularly'' means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed ``customarily and regularly'' includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

Sec. 541.702 Exempt and nonexempt work. The term ``exempt work'' means all work described in Sec. 541.100, 541.101, 541.200, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered ``nonexempt.''

Sec. 541.703 Directly and closely related.
(a) Work that is ``directly and closely related'' to the performance of exempt work is also considered exempt work. The phrase ``directly and closely related'' means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, ``directly and closely related'' work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work ``directly and closely related'' to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not ``directly and closely related'' if the work is remotely related or completely unrelated to exempt duties.
(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work: (1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees. (2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties. (3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector. (4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a

particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, non- supervisors may perform such work. However, particularly in small plants, such work may be a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work. (5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions. (6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client· after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note-taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note-taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption. (7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under Sec. 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies. (8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common- carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work. (9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants. (10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

Sec. 541.704 Use of manuals. The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under section 13(a)(1) of the Act or the regulations in this part. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. The section 13(a)(1) exemptions are not available, however, for employees who

simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

Sec. 541.705 Trainees. The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

Sec. 541.706 Emergencies.
(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.
(b) An ``emergency'' does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.
(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work: (1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive. (2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work. (3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly. (4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

Sec. 541.707 Occasional tasks. Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates; practicability of delegating the work to a nonexempt employee; whether the exempt employee performs the task frequently or occasionally; and existence of an industry practice for the exempt employee to perform the task.

Sec. 541.708 Combination exemptions. Employees who perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

Sec. 541.709 Motion picture producing industry. The requirement that the employee be paid ``on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $695 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C or D of this part, and who is employed at a base rate of at least $695 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $695 if 6 days were worked; or (b) The employee is in a job category having a weekly base rate of at least $695 and the daily base rate is at least one-sixth of such weekly base rate.

Sec. 541.710 Employees of Public Agencies. (a) An employee of a public agency who otherwise meets the salary basis requirements of section 541.602 shall not be disqualified from exemption under sections 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because: (1) Permission for its use has not been sought or has been sought or denied; (2) Accrued leave has been exhausted; (3) The employee chooses to use leave without pay. (b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except on the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

END

NATIONAL SCHOOL BREAKFAST WEEK

Mr. DURBIN. Mr. President, I rise today to commemorate National School Breakfast Week. For the past 30 years, the School Breakfast Program has provided nutritious morning meals to our Nation's neediest youth. Today, over 1 million children across the United States are malnourished, and the School Breakfast Program is a first line of defense against this growing epidemic.

The School Breakfast Program was established through the Child Nutrition Act of 1966. Despite this law, many low-income children still go without breakfast each day. Every student eligible for a free or reduced-price school lunch is also eligible for a free or reduced-price breakfast.

In my home State of Illinois, during the 2003–2004 school year, over 1 million children from lower-income families participated in the National School Lunch Program, yet only about 200,000 children received a school breakfast on an average day through the National School Breakfast Program.

This disparity is not unique to Illinois. Nationally, 43 students receive a free or reduced-price school breakfast for every 100 students that receive a school lunch. To receive a free school breakfast or lunch, a family's income must be at or below 130 percent of the poverty line, and to receive a reduced-price school breakfast or lunch, the family income must be at or below 185 percent of the poverty line.

Students who are unable to eat breakfast experience negative physical, emotional and educational effects. Children who do not eat breakfast tend to produce low math and reading scores, have trouble recalling information, and are more likely to have disciplinary and psychological problems.

On the other hand, when children eat a nutritious breakfast, like the meals provided through the National School Breakfast Program, their standardized test scores tend to increase and their memory skills improve. They are less inclined to visit the school nurse complaining of headaches and stomach pangs throughout the school day. They are also less likely to become obese later in life and are more likely to eat more fruit, drink more milk, and consume less saturated fat than students who do not eat meals provided by the school.

From 1989 to today, the number of children participating in the School Breakfast Program has doubled from around 3 million to over 6 million, and if the breakfasts were available to more children, the numbers would likely increase.

In Illinois, the State legislature and the Governor recognized the need for this vital program. On February 15, 2005, Governor Rod Blagojevich signed the Childhood Hunger Relief Act, stipulating that all schools in which at least 40 percent of the students are eligible for free or reduced-price lunches must also provide a breakfast program. This action will hopefully increase the academic as well as physical and psychological well-being of Illinois school children.

Today, I ask that we recognize States like Illinois—States that are providing school breakfasts to their neediest children. I ask that we continue to push toward higher nutritional standards throughout the United States to ensure the well-being of our Nation's youth.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT of 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last August, three gay men were violently attacked in Rehoboth Beach, DE. One victim suffered a broken jaw and was knocked unconscious by the attackers who were shouting anti-gay epithets at the victims.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

BLUE STAR FAMILIES WEEK

Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to the brave men and women who serve around the world in America's Armed Forces, and to recognize what the California State Assembly has designated as Blue Star Families Week.

Blue Star Families Week is an opportunity to show that the United States and California stand behind members of the Armed Forces and their families as they serve with valor at home and abroad.

The Blue Star Flag is an official banner authorized by the Department of Defense and is given to families with loved ones serving in the Armed Forces to place in their windows as a visible sign of their family's sacrifice. Blue Star flags date back to World War I and serve as a symbol of community support and solidarity in times of war and hostility.

I am proud of the men and women of our Armed Forces that are bravely serving all over the world to protect our freedom, our democracy and our way of life. During my recent trip to Iraq I had the honor of witnessing the strong character of our troops. We owe an immeasurable debt to the families of these men and women who are willing to sacrifice their futures for our country. The Blue Star program is another way we can show how much we value their heroism and bravery.

I am pleased to take time this week to salute the brave heroes in the Armed Forces, and their loved ones, for their tremendous sacrifice and dedication.

ADDITIONAL STATEMENTS

TRIBUTE TO HEAD COACH TOM BRENNAN

● Mr. JEFFORDS. Mr. President, I rise today to congratulate Tom Brennan on an outstanding career as the head coach of the men's basketball team at the University of Vermont. As he departs UVM after 19 years, I wish to recognize the contribution he has made to both the University and to the State of Vermont.

Tom began his distinguished career at UVM in 1986. Within just 5 years, in 1991, he was named the America East Coach of the Year, the first of three times he would receive that honor. Throughout his tenure at UVM, Tom worked to improve the basketball program, which became one of the best in the America East under his watch. Tom also became a local favorite on the airwaves as the cohost of ''Corm and the Coach,'' a morning radio show that makes us all appreciate just how hard life can be for Tom's opposing coaches.

In recent years, UVM basketball has been marked by enthusiastic support throughout Vermont and sold-out crowds at Patrick Gym as Tom guided the Catamounts to unprecedented success. In both 2003 and 2004, the Cats captured the America East Championship and secured a trip to the NCAA tournament. On Saturday, the Cats will play for their third straight America East Championship and third straight trip to the NCAA tournament. Tom will retire with at least 262 career victories at UVM, more than any basketball coach in school history.

Cats fans everywhere have grown to respect and admire Tom for the results he produced on the court, the integrity of the program he led, and the character of the young men he helped to shape. Patrick Gym will not be the same without Tom Brennan on the sidelines. I wish him the best as he begins the next chapter of his life.●

TRIBUTE TO CAPT DAVID M. MORRISS

● Mr. WARNER. Mr. President, I rise today to recognize and pay tribute to CAPT David M. Morriss, Judge Advocate General's Corps, United States Navy. Captain Morriss will retire from the Navy on March 11, 2005, having completed a distinguished 26-year career of service to our Nation.

Captain Morriss was born in Elizabethtown, TN and is a graduate of the United States Naval Academy and the University of Virginia School of Law.

He also earned a Master of Laws degree from Harvard Law School.

During his military career, Captain Morriss excelled at all facets of his chosen professions of law and Naval service. As a line officer, he served both as Fire Control Officer onboard USS *Bowen*, FF–1079, and as Supporting Arms Coordinator/Assistant Operations Officer for Amphibious Squadron EIGHT. He qualified as a Surface Warfare Officer before being accepted in the law education program.

As a judge advocate, Captain Morriss has served in a variety of challenging assignments. Like many judge advocates that have come before and have followed him, Captain Morriss began his legal career as a defense counsel and legal assistance attorney at the Navy Legal Services Office, Charleston, SC. Later in his career, he was given the honor of leading young judge advocates as the commanding officer, Navy Legal Services Office National Capital Region.

As Force/Fleet Judge Advocate he provided critical legal advice for operations in the Central Command's area of operations. His keen intellect and integrity led to Captain Morriss' services as the Assistant for Legal and Legislative matters for the Vice Chief of Naval Operations. This would not be the last time Captain Morriss was asked by the Department of the Navy for his advice and counsel on legislation.

I am sure that many of my colleagues know and appreciate Captain Morriss' service as Director of Legislation in the Navy's Office of Legislative Affairs and his prior service as a Legislative Counsel in that same office. During these assignments, he directly contributed to clear and concise communication between Congress and the Departments of the Navy on a broad range of legislative matters. His talents, knowledge, and legal acumen are such that I have asked him to serve on the staff of the Senate Armed services Committee. The Navy's loss is certainly the Senate's gain, and we look forward to working with Dave Morriss for many years to come.

The Nation, the United States Navy, and the Judge Advocate General's Corps have been made better through the talent and dedication of CAPT David M. Morriss. I know all of my colleagues join me in congratulating Dave, his wife Mary Elizabeth, and sons John, Will, and Graham, on the completion of an outstanding military career.●

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 570. A bill to amend title XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1241. A communication from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Certification Requirements of Multistage Vehicles'' (2127–AE27) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1242. A communication from the Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft'' (RIN2137–AD29) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1243. A communication from the Deputy Assistant Chief Counsel, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Positive Train Control'' (RIN2130–AA94) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1244. A communication from the Program Analyst, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gippsland Aeronautics Pty Ltd. Model GA8 Airplanes'' ((RIN2120–AA64) (2005–0103)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1245. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Series Turbofan Engines'' ((RIN2120–AA64) (2005–0104)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1246. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney JT8D–209, 217, 217A, 217C, and 219 Series Turbofan Engines'' ((RIN2120–AA64 (2005–0105)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1247. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB 135BJ Series Airplanes'' ((RIN2120–AA64) (2005–0106)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1248. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas odel MD 11 and MD 11F Airplanes Equipped with Pratt and Whitney PW4000 Series Engines'' ((RIN2120–AA64) (2005–0107)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1249. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757 Series Airplanes Equipped with Rolls Royce Model RB211 Engines'' ((RIN2120–AA64) (2005–0108)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1250. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 11 and MD 11F Airplanes'' ((RIN2120–AA64 (2005–0109)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1251. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A319, A320, and A321 Series Airplanes'' ((RIN2120–AA64) (2005–0110)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1252. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200, 300, and 300F Series Airplanes'' ((RIN2120–AA64) (2005–0111)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1253. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Carrying Candidates in Elections'' (RIN2120–AI12) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1254. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pacific Aerospace Corp, Ltd. Model 750XL Airplanes'' ((RIN2120–AA64) (2005–0114)) received on March 8 , 2005; to the Committee on Commerce, Science, and Transportation.

EC–1255. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–300, 400, and 500 Series Airplanes; and Model 757–200 and 200CB Series Airplanes'' ((RIN2120–AA64) (2005–0113)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1256. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747 Series Airplanes'' ((RIN2120–AA64) (2005–0112)) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1257. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Cape Town Treaty Implementation; Opportunity to Comment on Information Collection Requirements'' (RIN2120–AI48) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1258. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Redesignation of Mountainous Areas in Alaska'' (RIN2120–AI44) received on March 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1259. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oriental Fruit Fly; Removal of Quarantined Area'' (APHIS Docket No. 04–106–2) received on March 8, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1260. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Federal Gas Valuation'' (RIN1010–AD05) received on March 8, 2005; to the Committee on Energy and Natural Resources.

EC–1261. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report concerning the International Labour Conference; to the Committee on Foreign Relations.

EC–1262. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of the wearing of the insignia of major general; to the Committee on Armed Services.

EC–1263. A communication from the Deputy Assistant Secretary of the Army (Project Planning and Review), Department of Defense, transmitting, pursuant to law, the reports of the Chief of Engineers; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 134. A bill to adjust the boundary of Redwood National Park in the State of California (Rept. No. 109–23).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 205. A bill to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers (Rept. No. 109–24).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 207. A bill to adjust the boundary of the Barataria Preserve Unit of the Jean Lafitte National Historical Park and Preserve in the State of Louisiana, and for other purposes (Rept. No. 109–25).

By Mr. DODD, from the Committee on Energy and Natural Resources, without amendment:

S. 243. A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes (Rept. No. 109–26).

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 250. A bill to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Ronald Rosenfeld, of Oklahoma, to be a Director of the Federal Housing Finance Board for the remainder of the term expiring February 27, 2009.

By Mr. GRASSLEY for the Committee on Finance. Harold Damelin, of Virginia, to be Inspector General, Department of the Treasury.

Raymond Thomas Wagner, Jr., of Missouri, to be a Member of the Internal Revenue Service Oversight Board for a term expiring September 14, 2009.

By Ms. COLLINS for the Committee on Homeland Security and Governmental Affairs. *Michael Jackson, of Virginia, to be Deputy Secretary of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate. (Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. NELSON of Florida:

S. 570. A bill to amend title XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should the become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes; read the first time.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 571. A bill to designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the ''Congresswoman Shirley A. Chisholm Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. AKAKA (for himself and Mr. DURBIN):

S. 572. A bill to amend the Homeland Security Act of 2002 to give additional biosecurity responsibilities to the Department of Homeland Security; to the Committee on Homeland Security and Governmental Affairs.

By Mr. AKAKA (for himself and Mr. DURBIN):

S. 573. A bill to improve the response of the Federal Government to agroterrorism and agricultural diseases; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DODD (for himself, Mr. LIEBERMAN, Mr. KERRY, and Mr. KENNEDY):

S. 574. A bill to amend the Quinebaug and Shetucket Rivers Valley National Heritage Corridor Act of 1994 to increase the authorization of appropriations and modify the date on which the authority of the Secretary of the Interior terminates under the Act; to the Committee on Energy and Natural Resources.

By Ms. MIKULSKI (for herself, Mr. LAUTENBERG, Mrs. BOXER, and Mr. LEVIN):

S. 575. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for certain education expenses; to the Committee on Finance.

By Mr. BYRD:

S. 576. A bill to restore the prohibition on the commercial sale and slaughter of wild free-roaming horses and burros; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 577. A bill to promote health care coverage for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LAUTENBERG (for himself, Mr. CORZINE, Mr. SCHUMER, Mrs. CLINTON, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. REED, and Mr. KENNEDY):

S. 578. A bill to better manage the national instant criminal background check system and terrorism matches; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself, Mr. BROWNBACK, Mrs. CLINTON, Mr. SANTORUM, Ms. LANDRIEU, Mr. DURBIN, and Mr. ENSIGN):

S. 579. A bill to amend the Public Health Service Act to authorize funding for the establishment of a program on children and the media within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself, Mr. CONRAD, Mr. STEVENS, Mr. HAGEL, and Mr. CHAFEE):

S. 580. A bill to amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust; to the Committee on Finance.

By Mr. GRAHAM (for himself and Mr. SESSIONS):

S. 581. A bill to contain the costs of the medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

By Mr. PRYOR (for himself and Mrs. LINCOLN):

S. 582. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. LANDRIEU:

S. 583. A bill to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments; to the Committee on Finance.

By Mr. SALAZAR:

S. 584. A bill to require the Secretary of the Interior to allow the continued occupancy and use of certain land and improvements within Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 585. A bill to better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BOND (for himself and Mr. VITTER):

S. 586. A bill to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LIEBERMAN (for himself, Mr. ALLEN, Mr. DODD, and Mr. BIDEN):

S. Res. 76. A resolution expressing the sense of the Senate on the anniversary of the deadly terrorist attacks launched against the people of Spain on March 11, 2004; considered and agreed to.

By Mr. SANTORUM (for himself, Mr. BROWNBACK, Mr. ALLEN, Mr. DEMINT, Mr. BURR, and Ms. CANTWELL):

S. Res. 77. A resolution condemning all acts of terrorism in Lebanon and calling for the removal of Syrian troops from Lebanon and supporting the people of Lebanon in their quest for a truly democratic form of government; considered and agreed to.

By Mr. HATCH (for himself and Mr. KENNEDY):

S. Res. 78. A resolution recognizing and honoring the life of Arthur Miller; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself, Mr. CORNYN, Mr. CORZINE, Mr. DURBIN, Mr. ENSIGN, Mr. FEINGOLD, Mrs. FEINSTEIN, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, and Mrs. MURRAY):

S. Con. Res. 16. A concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. INOUYE, the names of the Senator from Mississippi (Mr. LOTT) and the Senator from New Hampshire (Mr. GREGG) were added as cosponsors of S. 50, a bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes.

S. 211

At the request of Mrs. DOLE, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 217

At the request of Mr. BINGAMAN, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 217, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 230

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 230, a bill to improve railroad safety.

S. 233

At the request of Mr. ROBERTS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 233, a bill to increase the supply of quality child care.

S. 236

At the request of Mr. NELSON of Nebraska, the names of the Senator from Georgia (Mr. ISAKSON), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Colorado (Mr . SALAZAR) were added as cosponsors of S. 236, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 331

At the request of Mr. JOHNSON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 331, a bill to amend title 38, United States Code, to provide for an assured adequate level of funding for veterans health care.

S. 352

At the request of Ms. MIKULSKI, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 352, a bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes.

S. 359

At the request of Mr. CRAIG, the names of the Senator from Indiana (Mr. BAYH), the Senator from New York (Mrs. CLINTON), the Senator from Iowa (Mr. HARKIN) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 359, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 364

At the request of Mr. INOUYE, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S . 364, a bill to establish a program within the National Oceanic Atmospheric Administration to integrate Federal coastal and ocean mapping activities.

S. 397

At the request of Mr. CRAIG, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from Florida (Mr . MARTINEZ) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of S. 397, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

S. 414

At the request of Mr. MCCONNELL, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 414, a bill to amend the Help America Vote Act of 2002 to protect the right of Americans to vote through the prevention of voter fraud, and for other purposes.

S. 424

At the request of Mr. BOND, the names of the Senator from Iowa (Mr. GRASSLEY) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 471

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 471, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 489

At the request of Mr. ALEXANDER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 489, a bill to amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

S. 495

At the request of Mr. BROWNBACK, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 495, a bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes.

S. 501

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 501, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 506

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 506, a bill to amend the Public Health Service Act to establish a scholarship and loan repayment program for public health preparedness workforce development to eliminate critical public health preparedness workforce shortages in Federal, State, local, and tribal public health agencies.

S. 513

At the request of Mr. GREGG, the names of the Senator from Ohio (Mr. DEWINE), the Senator from Maine (Ms. SNOWE) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 513, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 537

At the request of Mr. BINGAMAN, the names of the Senator from Maine (Ms. COLLINS), the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. REED) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 537, a bill to increase the number of well-trained mental health service professionals (including those based in

schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 539

At the request of Mr. MARTINEZ, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 539, a bill to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

S. 544

At the request of Mr. JEFFORDS, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 544, a bill to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety.

S. 548

At the request of Mr. CONRAD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 548, a bill to amend the Food Security Act of 1985 to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make their land available for access by the public under programs administered by States and tribal governments.

S. 551

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 551, a bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in the Colorado Springs, Colorado, metropolitan area.

S. RES. 31

At the request of Mr. COLEMAN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Washington (Ms. CANTWELL), the Senator from Maine (Ms. COLLINS), the Senator from North Carolina (Mrs. DOLE), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Iowa (Mr. GRASSLEY), the Senator from Georgia (Mr. ISAKSON), the Senator from Massachusetts (Mr. KERRY), the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Res. 31, a resolution expressing the sense of the Senate that the week of August 7, 2005, be designated as ''National Health Center Week'' in order to raise awareness of health services provided by community, migrant, public housing, and homeless health centers, and for other purposes.

S. RES. 71

At the request of Mr. CRAIG, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. Res. 71, a resolution designating the week beginning March 13, 2005 as ''National Safe Place Week''.

AMENDMENT NO. 68

At the request of Mr. KOHL, his name was added as a cosponsor of amendment No. 68 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON of Florida:

S. 570. A bill to amend title XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes; read the first time.

Mr. NELSON of Florida. Mr. President, I am introducing the Information Security and Protection Act. It has to do with a subject matter about which we have had breaking news over the course of the last several days, and that is identity theft.

Two weeks ago we found out a company named ChoicePoint, a Georgia company, because of the conviction in a plea bargain with someone who had under false pretenses broken into the database of this information broker, had 400,000 individual records stolen and thus subject to the taking of the personal identity of those 400,000 people. Of those we know of, 10,000 of them are in my State, and I can tell you, having met with a group of Floridians we picked at random in the central Florida area I met with a week and a half ago, it has been a tale of extraordinarily horrific circumstances for these Americans when their identity was stolen to, No. 1, stop the theft, and then, No. 2, to reclaim their identity and to get back their identity, for example, with a credit card on which bills have been run up and therefore their credit becomes bad. Trying to get back their good name and their good credit has become a horrific process.

One of the central Floridians I met with is a truckdriver who has a special license to drive trucks with hazardous materials. This particular individual is so frustrated because whenever he goes to this Government agency or that Government agency, they always send him to another one, saying we can't help you. There is someone out there with his identity who keeps violating traffic rules and laws all over the country and he keeps getting summonses to courts in States all over the country, and he can't get back his identity.

That is just one example. Or take the example of the mom recently widowed, so her grown daughter takes over the paying of her bills, and because the mom has always been frugal, the daughter sees a charge on the credit card for $10,000 and thinks, well, my mom is suddenly going to start spending a little on herself. The daughter continues to pay these kinds of bills until she finally gets a call from a store in San Francisco and the clerk says, I want to see if you will approve this $26,000 charge for your mother. And she says, well, that is not my mother because my mother is not in San Francisco, she is here with me in Cocoa, FL right now. Fortunately, the game was up. They stopped that process, but that daughter had already paid $40,000 worth of bills thinking they were legitimate charges by her mother, and she will never get back that $40,000.

These are just a couple of examples of identity theft. But now the problem has gotten to be so much larger because these data collectors, which I call information brokers, with the advance of technology are able to gather billions and billions of records. This particular company that has come to light over the last couple of weeks with the theft of 400,000 records—ChoicePoint is the name of the company—has stored, now listen to this, 17 to 19 billion—that is with a B—records. With that amount of data, they virtually have information on every American. It is not just credit reports that are protected by the Fair Credit Reporting Act. It is Social Security numbers and driver's licenses. It is job applications. It is DNA tests. It is medical records.

With this kind of information, centralized under the control of one company, if there is a penetration of the security of that company, then you see what the invasion of our privacy is about to cause.

Indeed, we are going to be in a situation where no American has any privacy, and we are going to continue to go through this process until we say, enough already, and the people stand up and say: You have to protect our privacy.

That is what the bill I am introducing, the Information Security and Protection Act, sets out to do. It is going to require legal safeguards, put some teeth in the law, that is going to require not just credit reports, which is covered by existing Federal law, but it is going to require these collectors of information who sell them for a profit-making business to have the safeguards to protect the consumers.

Additionally, it is going to have the safeguards for the consumers so they can have access to those records and see if, in fact, they are correct, and if they are not, correct them and have a list of the people who are seeking the information about them.

We had another case come to light a week ago, and that was the case of records that are missing. We do not know if they were destroyed, if they were lost, or if they were stolen, but they are the records of customers of the Bank of America. We are talking about 1.2 million customers. And, oh, by the way, some of those customers

are Federal employees who happen to have this particular card. It is the Federal travel card. This card is distributed additionally to the Members of the Senate.

On that stolen or missing information is the very personal and private information of 60 Senators in this Chamber. Let's hope we do not become the victims of identity theft and that we have to go through all of these horrific experiences I have heard in talking with some of my constituents. But, in fact, we may. Until we find out what happened to those records of 1.2 million individuals, Federal employees, then we are subject to these kinds of traumas that come from identity theft.

Today we have learned of a major breach at the Boca Raton based company called SizeNet. It is a part of Lexis-Nexis. Information that was accessed included names, addresses, Social Security and driver's license numbers; not the credit history, medical records, or financial information. This group said—and they put out a statement to the London Stock Exchange—that this was information on 32,000 U.S. citizens. It may have been accessed from one of the databases. The company said the breach, made on its legal and business information service, Lexis-Nexis, which had recently acquired this SizeNet unit, was being investigated by staff and U.S. law enforcement authorities. So here we have another 32,000 U.S. citizens who could possibly be the victims of identity theft.

Are we going to do anything about it? I sure hope so, and I am hopeful that we are going to have the Congress start to take action on a bill Congressman MARKEY in the House, a Member of the House Commerce Committee, and I, a Member of the Senate Commerce Committee, have introduced.

This bill requires the Federal Government to begin to regulate the products offered by information brokers. Under the legislation, the Federal Trade Commission would pass regulations that would empower consumers to have control over the personal information they have compiled in these databases. Consumers would be given, for the first time, the right to find out what files information brokers keep about them, and they would be given the right to make sure the information in the files is correct. They would be given the right to promptly correct the inaccurate information. They would be permitted to find out which people have asked for copies of their personal information.

What would be the responsibility of the information broker? It would require the Federal Trade Commission to come up with standards to ensure that those brokers know to whom they are selling that consumer information and the purposes for which it is being used. Those information brokers would be required to safeguard and protect the privacy of the billions of consumer records they hold.

Under present law, there is no protection unless you fall under a law such as the Fair Credit Reporting Act which protects consumer credit records. But all the amassing of this additional data is not protected under current law.

This bill I am filing also allows Government law enforcers and consumers to bring tough legal actions against the brokers if they violate the new regulations that the FTC would promulgate. Then it clearly gives a nod to the States to pass their own laws that they believe are necessary to effectively regulate information brokers.

This bill is not a catchall bill. This bill is meant to focus very narrowly on information brokers. It instructs the FTC to carve out appropriate regulatory exemptions that are in the public interest. So there is flexibility for the FTC to adjust to different circumstances.

After the FTC passes its new regulations, then the FTC, in our oversight capacity, would be reporting back to us and specifically would be reporting to our committees—the Commerce Committees in both the House and the Senate—and then Congress would determine whether further statutory changes were necessary, as is the prerogative to adjust and adapt as circumstances change.

I want to work with all the people who are involved in this situation. We do not want something that is overreaching, but were are getting to the point that with the advance of technology, something has to be done or virtually none of us will have any privacy.

By the way, there is another reason to pass this legislation. We are in a new kind of war, and that war is against terrorists. The terrorist deals by stealth, and one way is to assume the identity of someone else. If we do not have the protections of all our identities, there is another source for the terrorist.

What is it going to take to spur the Congress into action? I thank the time is here. We have three examples in the last 2 weeks—ChoicePoint, Bank of America, and today Lexis-Nexis. I ask for the support of the Senate in passing the Information Protection and Security Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Advance Directives Education Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Every year 2,500,000 people die in the United States. Eighty percent of those people die in institutions such as hospitals, nursing homes, and other facilities. Chronic illnesses, such as cancer and heart disease, account for 2 out of every 3 deaths.

(2) In January 2004, a study published in the Journal of the American Medical Association concluded that many people dying in institutions have unmet medical, psychological, and spiritual needs. Moreover, family members of decedents who received care at home with hospice services were more likely to report a favorable dying experience.

(3) In 1997, the Supreme Court of the United States, in its decisions in Washington v. Glucksberg and Vacco v. Quill, reaffirmed the constitutional right of competent adults to refuse unwanted medical treatment. In those cases, the Court stressed the use of advance directives as a means of safeguarding that right should those adults become incapable of deciding for themselves.

(4) A study published in 2002 estimated that the overall prevalence of advance directives is between 15 and 20 percent of the general population, despite the passage of the Patient Self-Determination Act in 1990, which requires that health care providers tell patients about advance directives.

(5) Competent adults should complete advance care plans stipulating their health care decisions in the event that they become unable to speak for themselves. Through the execution of advance directives, including living wills and durable powers of attorney for health care according to the laws of the State in which they reside, individuals can protect their right to express their wishes and have them respected.

(b) PURPOSES.—The purposes of this Act are to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

SEC. 3. IMPROVEMENT OF POLICIES RELATED TO THE USE AND PORTABILITY OF ADVANCE DIRECTIVES.

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (3), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following new paragraph:

''(5)(A) In addition to the requirements of paragraph (1), a provider of services, Medicare Advantage organization, or prepaid or eligible organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following paragraph:

''(6)(A) In addition to the requirements of paragraph (1), a provider or organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 4. INCREASING AWARENESS OF THE IMPORTANCE OF END-OF-LIFE PLANNING.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

''PART R—PROGRAMS TO INCREASE AWARENESS OF ADVANCE DIRECTIVE PLANNING ISSUES

''SEC. 399Z–1. ADVANCE DIRECTIVE EDUCATION CAMPAIGNS AND INFORMATION CLEARINGHOUSES.

''The Secretary shall provide for the establishment of a national, toll-free, information clearinghouse as well as clearinghouses that the public may access to find out about State-specific information regarding advance directive and end-of-life decisions.''.

SEC. 5. GAO STUDY AND REPORT ON ESTABLISHMENT OF NATIONAL ADVANCE DIRECTIVE REGISTRY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility of a national registry for advance directives, taking into consideration the constraints created by the privacy provisions enacted as a result of the Health Insurance Portability and Accountability Act.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

SEC. 6. ADVANCE DIRECTIVES AT STATE DEPARTMENT OF MOTOR VEHICLES.

Each State shall establish a program of providing information on the advance directives clearinghouse established pursuant to section 399Z-1 of the Public Health Service Act to individuals who are residents of the State at such State's department of motor vehicles. Such program shall be modeled after the program of providing information regarding organ donation established at the State's department of motor vehicles, if such State has such an organ donation program.

By Mr. AKAKA (for himself and Mr. DURBIN):

S. 572. A bill to amend the Homeland Security Act of 2002 to give additional biosecurity responsibilities to the Department of Homeland Security; to the Committee on Homeland Security and Governmental Affairs.

By Mr. AKAKA (for himself and Mr. DURBIN):

S. 573. A bill to improve the response of the Federal Government to agroterrorism and agricultural diseases; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. AKAKA. Mr. President, I rise today to introduce two bills to increase the security of the Nation's agriculture and food supply: the Homeland Security Food and Agriculture Act and the Agriculture Security Assistance Act. Both measures build on legislation I sponsored in the 107th and 108th Congresses. I would like to thank my good friend, Senator DURBIN, who cosponsored my agriculture security bills last session, for continuing his support of this legislation.

The first bill, the Homeland Security Food and Agriculture Act, will enhance coordination between the Department of Homeland Security (DHS) and other Federal agencies responsible for food and agriculture security. The Agriculture Security Assistance Act will increase coordination between Federal and State, local, and tribal officials and offer financial and technical assistance to farmers, ranchers, and veterinarians to improve preparedness.

The Nation's agriculture industry represents about 13 percent of GDP and nearly 17 percent of domestic employment. Yet, this critical economic sector is not receiving adequate protection from accidental or intentional contamination that would damage our economy, and, most importantly, could cost lives. Such contamination could be devastating to states such as Hawaii which generates more than $1.9 billion in agricultural sales annually.

Just last week, the President of Interpol warned that the consequences of an attack on livestock are ''substantial'' and ''relatively little'' is being done to prevent such an attack.

The introduction of my bills coincides with the release of a report I requested from the Government Accountability Office (GAO) entitled ''Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain.'' The report reviews the current state of agriculture security in the United States and makes recommendations. While GAO reported some accomplishments, such as conducting vulnerability assessments of agricultural products, establishing the Food and Agriculture Sector Coordinating Council, and funding two university-based Centers of Excellence to research livestock and poultry diseases, GAO found that critical vulnerabilities still exist.

Even though veterinarians may be the first to spot outbreaks of diseases, Department of Agriculture (USDA) certified veterinarians are not required to

demonstrate any knowledge of foreign animal diseases. This is short sighted given how easily animal diseases can travel from country to country as we have seen with the avian flu over the past few years. It is important that veterinarians, who will be our first responders in the event of an agroterrorist attack, be able to identify symptoms of a foreign disease in U.S. livestock.

GAO also highlights USDA's inability to deploy vaccines within 24 hours of an animal disease outbreak as required by Homeland Security Presidential Directive 9 (HSPD–9). According to GAO, the vaccine for foot-and-mouth disease (FMD), which is the only animal disease vaccine that the United States stockpiles, is purchased from Britain in a concentrate form. To use the vaccine the concentrate must be sent back to Britain to be activated, which adds at least three weeks to the deployment time.

According to a scenario from Dr. Tom McGinn, formerly of the North Carolina Department of Agriculture, FMD would spread to 23 States five days after an initial outbreak and to 40 States after 30 days. By the time the vaccine is deployed, FMD could spread across the country. We cannot afford to wait three weeks to start vaccinating livestock. Why is the United States outsourcing this critical security function? USDA should either store ready-to-use vaccines in the U.S. or examine ways to activate the vaccines in this country.

Equally troubling is that over the past 2 years, the number of agricultural inspections performed by the U.S. has declined by 3.4 million since DHS took over the border inspection responsibility from USDA. Mr. Kim Mann, a spokesman from the National Association of Agriculture Employees (NAAE), expressed similar concerns at a February 10, 2005, hearing conducted by the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (OGM). Mr. Mann testified that of the approximately 2,100 Agriculture Quarantine Inspection positions that were transferred from USDA to DHS in 2003, only about 1,300 of those positions are currently filled. According to Mr. Mann, agriculture inspectors have left DHS to return to USDA because of DHS's lack of commitment to its agriculture mission, and DHS is not filling these vacancies. I recently wrote Undersecretary for Border and Transportation Security Asa Hutchinson expressing my concern over these reports because agriculture inspections are crucial to the economy of Hawaii which is home to more endangered species than any other State.

GAO also reported a lack of communication between DHS and states regarding the development of emergency response plans, grant guidance, and best practices. States agriculture officials were given as little as three days to provide input on the National Response Plan and the National Infrastructure Protection Plan. In addition, the State Homeland Security Grant Program grant guidance puts little emphasis on agriculture as a sector eligible for assistance. In fact, agriculture only became eligible in fiscal year 04 and many states are unaware that funds can be directed towards agriculture security. In addition, State and industry officials reported that there is no mechanism to share lessons learned from exercises or real-life animal disease outbreaks.

GAO further notes that shortcomings exist in DHS's Federal coordination of national efforts to protect against agroterrorism. Federal officials claim that there is confusion in interagency working groups as to which responsibility falls with whom. DHS reportedly also has been unable to coordinate agriculture security research efforts government-wide as is required by HSPD–9. While some program staff from DHS, USDA, and Health and Human Services have engaged in preliminary discussions, there is no overall departmental coordination of policy and budget issues between the various Federal agencies.

My bills address many of the concerns raised by GAO. The Homeland Security Food and Agriculture Act will: increase communication and coordination between DHS and state, local, and tribal homeland security officials regarding agroterrorism; Ensure agriculture security is included in state, local, and regional emergency response plans; and establish a task force of state and local first responders that will work with DHS to identify best practices in the area of agriculture security.

The Agriculture Security Assistance Act will: provide financial and technical assistance to states and localities for agroterrorism preparedness and response; increase international agricultural disease surveillance and inspections of imported agricultural products; require that certified veterinarians be knowledgeable in foreign animal diseases; and require that USDA study the costs and benefits of developing a more robust animal disease vaccine stockpile.

The United States needs a coordinated approach in dealing with the possibility of an attack on our food supply, which could affect millions. While improvements have occurred since I first voiced my concerns over food and agriculture security in 2001, critical vulnerabilities remain. I urge my colleagues to join me in protecting America's breadbasket and support these vital pieces of legislation.

I ask unanimous consent that the text of both bills be printed in the RECORD.

There being no objection, the bills were ordered tobe printed in the RECORD, as follows:

S. 572

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Homeland Security Food and Agriculture Act of 2005''.

SEC. 2. AGRICULTURAL BIOSECURITY.

(a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by adding at the end the following:

''Subtitle J—Agricultural Biosecurity

''SEC. 899A. DEFINITIONS.

''In this subtitle:

''(1) AGRICULTURAL DISEASE.—The term 'agricultural disease' means an outbreak of a plant or animal disease, or a pest infestation, that requires prompt action in order to prevent injury or damage to people, plants, livestock, property, the economy, or the environment.

''(2) AGRICULTURE.—The term 'agriculture' includes—

''(A) the science and practice of an activity relating to—

''(i) food, feed, and fiber production; or

''(ii) the processing, marketing, distribution, use, or trade of food, feed, or fiber;

''(B) a social science, such as—

''(i) family and consumer science;

''(ii) nutritional science;

''(iii) food science and engineering; or

''(iv) agricultural economics; and

''(C) an environmental or natural resource science, such as—

''(i) forestry;

''(ii) wildlife science;

''(iii) fishery science;

''(iv) aquaculture;

''(v) floraculture; or

''(vi) veterinary medicine.

''(3) AGROTERRORIST ACT.—

''(A) IN GENERAL.—The term 'agroterrorist act' means the criminal act, committed with the intent described in subparagraph (B), of causing or attempting to cause damage or harm (including destruction or contamination) to—

''(i) a crop;

''(ii) livestock;

''(iii) farm or ranch equipment;

''(iv) material or property associated with agriculture; or

''(v) a person engaged in an agricultural activity.

''(B) INTENT.—The term 'agroterrorist act' means an act described in subparagraph (A) that is committed with the intent to—

''(i) intimidate or coerce a civilian population; or

''(ii) influence the policy of a government by intimidation or coercion.

''(4) BIOSECURITY.—

''(A) IN GENERAL.—The term 'biosecurity' means protection from the risk posed by a biological, chemical, or radiological agent to—

''(i) the agricultural economy;

''(ii) the environment;

''(iii) human health; or

''(iv) plant or animal health.

''(B) INCLUSIONS.—The term 'biosecurity' includes the exclusion, eradication, and control of a biological agent that causes an agricultural disease.

''(5) EMERGENCY RESPONSE PROVIDER.—The term 'emergency response provider' includes any Federal, State, or local—

''(A) emergency public safety professional;

''(B) law enforcement officer;

''(C) emergency medical professional (including an employee of a hospital emergency facility);

''(D) veterinarian or other animal health professional; and

''(E) related personnel, agency, or authority.

''(6) SUSPECT LOCATION.—The term 'suspect location' means a location that, as recognized by an element of the intelligence community—

''(A) has experienced, or may experience, an agroterrorist act or an unusual disease; or

''(B) has harbored, or may harbor, a person that committed an agroterrorist act.

''SEC. 899B. AGRICULTURAL SECURITY RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY.

''(a) COORDINATION OF FOOD AND AGRICULTURAL SECURITY.—

''(1) IN GENERAL.—The Secretary shall establish and carry out a program to protect the agriculture and food supply of the United States from agroterrorist acts.

''(2) PROGRAM INCLUSIONS.—The program established pursuant to paragraph (1) shall include provisions for —

''(A) advising and coordinating with Federal, State, local, regional, and tribal homeland security officials regarding—

''(i) preparedness for and the response to an agroterrorist act; and

''(ii) the detection, prevention, and mitigation of an agroterrorist act; and

''(B) executing the agriculture security responsibilities of the Secretary described in Homeland Security Presidential Directive 7 (December 17, 2003) and Homeland Security Presidential Directive 9 (February 3, 2004).

''(b) RESPONSIBILITIES.—

''(1) SECRETARY.—The Secretary shall have responsibility for—

''(A) increasing communication and coordination among all Federal, State, local, regional, and tribal emergency response providers regarding biosecurity;

''(B) ensuring that each Federal, State, local, regional, and tribal emergency response provider understands and executes the role of that emergency response provider in response to an agroterrorist attack;

''(C)(i) ensuring that State, local, and tribal officials have adequate access to information and resources at the Federal level; and

''(ii) developing and implementing information-sharing procedures by which a Federal, State, local, regional, or tribal emergency response provider can share information regarding a biological threat, risk, or vulnerability;

''(D) coordinating with the Secretary of Transportation to develop guidelines for restrictions on the interstate transportation of an agricultural commodity or product in response to an agricultural disease;

''(E) coordinating with the Administrator of the Environmental Protection Agency in considering the potential environmental impact of a response by Federal, regional, State, local, and tribal emergency response providers to an agricultural disease;

''(F) working with Federal agencies (including the Department of Agriculture and other elements of the intelligence community) to improve the ability of employees of the Department of Homeland Security to identify a biological commodity or product, livestock, and any other good that is imported from a suspect location;

''(G) coordinating with the Department of State to provide the President and Federal agencies guidelines for establishing a mutual assistance agreement with another country, including an agreement—

''(i) to provide training to veterinarians, public health workers, and agriculture specialists of the United States in the identification, diagnosis, and control of foreign diseases;

''(ii) to provide resources and technical assistance personnel to a foreign government with limited resources; and

''(iii) to participate in a bilateral or multilateral training program or exercise relating to biosecurity.

''(2) UNDERSECRETARY FOR EMERGENCY RESPONSE AND PREPAREDNESS.—The Undersecretary for Emergency Response and Preparedness shall have responsibility for—

''(A) not later than 180 days after the date of enactment of this subtitle, cooperating with State, local, and tribal homeland security officials to establish State, local, and regional response plans for an agricultural disease or agroterrorist act that include—

''(i) a comprehensive needs analyses to determine the appropriate investment requirements for responding to an agricultural disease or agroterrorist act;

''(ii) a potential emergency management assistance compact and any other mutual assistance agreement between neighboring States; and

''(iii) an identification of State and local laws (including regulations) and procedures that may affect the implementation of a State response plan; and

''(B) not later than 90 days after the date of enactment of this subtitle, establishing a task force consisting of State and local homeland security officials that shall—

''(i) identify the best practices for carrying out a regional or State biosecurity program;

''(ii) make available to State, local, and tribal governments a report that describes the best practices identified under clause (i); and

''(iii) design and make available information (based on the best practices identified under clause (i)) concerning training exercises for emergency response providers in the form of printed materials and electronic media to—

''(I) managers of State, local, and tribal emergency response provider organizations; and

''(II) State health and agricultural officials.

''(c) GRANTS TO FACILITATE PARTICIPATION OF STATE AND LOCAL ANIMAL HEALTH CARE OFFICIALS.—

''(1) IN GENERAL.—The Office of State and Local Coordination and Preparedness, in consultation with the Undersecretary for Emergency Response and Preparedness and the Secretary, shall establish a program under which the Secretary shall provide grants to communities to facilitate the participation of State and local animal health care officials in community emergency planning efforts.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2006.''.

S. 573

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Agricultural Security Assistance Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGRICULTURAL DISEASE.—The term ''agricultural disease'' means an outbreak of a plant or animal disease, or a pest infestation, that requires prompt action in order to prevent injury or damage to people, plants, livestock, property, the economy, or the environment.

(2) AGRICULTURAL DISEASE EMERGENCY.—The term ''agricultural disease emergency'' means an agricultural disease that the Secretary determines to be an emergency under—

(A) section 415 of the Plant Protection Act (7 U.S.C. 7715); or

(B) section 10407(b) of the Animal Health Protection Act (7 U.S.C. 8306(b)).

(3) AGRICULTURE.—The term ''agriculture'' includes—

(A) the science and practice of activities relating to food, feed, and fiber production, processing, marketing, distribution, use, and trade;

(B) family and consumer science, nutrition, food science and engineering, agricultural economics, and other social sciences; and

(C) forestry, wildlife science, fishery science, aquaculture, floraculture, veterinary medicine, and other environmental and natural resource sciences.

(4) AGROTERRORISM.—The term ''agroterrorism'' means the commission of an agroterrorist act.

(5) AGROTERRORIST ACT.—The term ''agroterrorist act'' means a criminal act consisting of causing or attempting to cause damage or harm to, or destruction or contamination of, a crop, livestock, farm or ranch equipment, material or property associated with agriculture, or a person engaged in agricultural activity, that is committed with the intent—

(A) to intimidate or coerce a civilian population; or

(B) to influence the policy of a government by intimidation or coercion.

(6) BIOSECURITY.—

(A) IN GENERAL.—The term ''biosecurity'' means protection from the risks posed by biological, chemical, or radiological agents to—

(i) plant or animal health;

(ii) the agricultural economy;

(iii) the environment; or

(iv) human health.

(B) INCLUSIONS.—The term ''biosecurity'' includes the exclusion, eradication, and control of biological agents that cause plant or animal diseases.

(7) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(9) TRIBAL GOVERNMENT.—The term ''tribal government'' means the governing body of an Indian tribe.

SEC. 3. STATE AND LOCAL ASSISTANCE.

(a) STUDY.—

(1) IN GENERAL.—In consultation with the steering committee of the National Animal Health Emergency Management System and other stakeholders, the Secretary shall conduct a study to—

(A) determine the best use of epidemiologists, computer modelers, and statisticians as members of emergency response task forces that handle foreign or emerging agricultural disease emergencies; and

(B) identify the types of data that are necessary for proper modeling and analysis of agricultural disease emergencies.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report that describes the results of the study under paragraph (1) to—

(A) the Secretary of Homeland Security; and

(B) the head of any other agency involved in response planning for agricultural disease emergencies.

(b) GEOGRAPHIC INFORMATION SYSTEM GRANTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Interior, shall establish a program under which the Secretary shall provide grants to States to develop capabilities to use a geographic information system or statistical model for an epidemiological assessment in the event of an agricultural disease emergency.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection—

(A) $2,500,000 for fiscal year 2006; and

(B) such sums as are necessary for each subsequent fiscal year.

(c) BIOSECURITY AWARENESS AND PROGRAMS.—

(1) IN GENERAL.—The Secretary shall implement a public awareness campaign for farmers, ranchers, and other agricultural producers that emphasizes—

(A) the need for heightened biosecurity on farms; and

(B) reporting to the Department of Agriculture any agricultural disease anomaly.

(2) ON-FARM BIOSECURITY.—

(A) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary, in consultation with associations of agricultural producers and taking into consideration research conducted under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3101 et seq.), shall—

(i) develop guidelines—

(I) to improve monitoring of vehicles and materials entering or leaving farm or ranch operations; and

(II) to control human traffic entering or leaving farm or ranch operations; and

(ii) distribute the guidelines developed under clause (i) to agricultural producers through agricultural informational seminars and biosecurity training sessions.

(B) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—There are authorized to be appropriated to carry out this paragraph—

(I) $5,000,000 for fiscal year 2006; and

(II) such sums as are necessary for each subsequent fiscal year.

(ii) INFORMATION PROGRAM.—Of the amounts made available under clause (i), the Secretary may use such sums as are necessary to establish in each State an information program to distribute the biosecurity guidelines developed under subparagraph (A)(i).

(3) BIOSECURITY GRANT PILOT PROGRAM.—

(A) INCENTIVES.—

(i) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary shall develop a pilot program to provide incentives, in the form of grants or low-interest loans, to agricultural producers to restructure farm and ranch operations (based on the biosecurity guidelines developed under paragraph (2)(A)(i)) to achieve the goals described in clause (ii).

(ii) GOALS.—The goals referred to in clause (i) are—

(I) to control access to farms and ranches by persons intending to commit agroterrorist acts;

(II) to prevent the introduction and spread of agricultural diseases; and

(III) to take other measures to ensure biosecurity.

(iii) LIMITATION.—The amount of a grant or low-interest loan provided under this paragraph shall not exceed $10,000.

(B) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(i) describes the implementation of the pilot program; and

(ii) makes recommendations for expanding the pilot program.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph—

(i) $5,000,000 for fiscal year 2006; and

(ii) such sums as are necessary for each of fiscal years 2007 through 2009.

SEC. 4. REGIONAL, STATE, AND LOCAL PREPAREDNESS.

(a) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall cooperate with regional, State, and local disaster preparedness officials to include consideration of the potential environmental effects of a response activity in planning a response to an agricultural disease.

(b) DEPARTMENT OF AGRICULTURE.—The Secretary, in consultation with the Secretary of Homeland Security, shall—

(1) develop and implement procedures to provide information to, and share information among, Federal, regional, State, tribal, and local officials regarding agricultural threats, risks, and vulnerabilities; and

(2) cooperate with State agricultural officials, State and local emergency managers, representatives from State land grant colleges and research universities, agricultural producers, and agricultural trade associations to establish local response plans for agricultural diseases.

SEC. 5. INTERAGENCY COORDINATION.

(a) AGRICULTURAL DISEASE LIAISONS.—

(1) AGRICULTURAL DISEASE MANAGEMENT LIAISON.—The Secretary of Homeland Security shall establish a senior level position within the Federal Emergency Management Agency the primary responsibility of which is to serve as a liaison for agricultural disease management between—

(A) the Department of Homeland Security; and

(B)(i) the Federal Emergency Management Agency;

(ii) the Department of Agriculture;

(iii) other Federal agencies responsible for a response to an emergency relating to an agriculture disease;

(iv) the emergency management community;

(v) State emergency and agricultural officials;

(vi) tribal governments; and

(vii) industries affected by agricultural disease.

(2) ANIMAL HEALTH CARE LIAISON.—The Secretary of Health and Human Services shall establish within the Department of Health and Human Services a senior level position the primary responsibility of which is to serve as a liaison between—

(A) the Department of Health and Human Services; and

(B)(i) the Department of Agriculture;

(ii) the animal health community;

(iii) the emergency management community;

(iv) tribal governments; and

(v) industries affected by agricultural disease.

(b) TRANSPORTATION.—

(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary and the Secretary of Homeland Security, shall—

(A) publish in the Federal Register proposed guidelines for restrictions on interstate transportation of an agricultural commodity or product in response to an agricultural disease;

(B) provide for a comment period of not less than 90 days for the proposed guidelines; and

(C) establish final guidelines, taking into consideration any comment received under subparagraph (B); and

(2) provide the guidelines described in paragraph (1) to officers and employees of—

(A) the Department of Agriculture;

(B) the Department of Transportation; and

(C) the Department of Homeland Security.

SEC. 6. INTERNATIONAL ACTIVITIES.

(a) INTERNATIONAL AGRICULTURAL DISEASE SURVEILLANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of State and the Administrator of the Agency for International Development, shall submit to Congress a report that describes measures taken by the Secretary to—

(1) streamline the process of notification by the Secretary to Federal agencies in the event of an agricultural disease in a foreign country; and

(2) cooperate with representatives of foreign countries, international organizations, and industry to develop and implement methods of sharing information relating to international agricultural diseases and unusual agricultural activities.

(b) BILATERAL MUTUAL ASSISTANCE AGREEMENTS.—The Secretary of State, in coordination with the Secretary and the Secretary of Homeland Security, shall—

(1) enter into mutual assistance agreements with other countries to provide and receive assistance in the event of an agricultural disease, including—

(A) training for veterinarians and agriculture specialists of the United States in the identification, diagnosis, and control of foreign agricultural diseases;

(B) providing resources and personnel to a foreign government with limited resources to respond to an agricultural disease; and

(C) bilateral training programs and exercises relating to assistance provided under this paragraph; and

(2) provide funding for a program or exercise described in paragraph (1)(C).

SEC. 7. ADDITIONAL STUDIES AND REPORTS.

(a) VACCINES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall conduct a study of, and submit to Congress a report that describes, the projected costs and benefits of developing ready-to-use vaccines against foreign animal diseases.

(b) PLANT DISEASE LABORATORY.—Not later than 270 days after the date of enactment of this Act, the Secretary shall conduct a study of, and submit to Congress a report that describes, the feasibility of establishing a national plant disease laboratory based on the model of the Centers for Disease Control and Prevention, the primary task of which is to—

(1) integrate and coordinate a nationwide system of independent plant disease diagnostic laboratories, including plant clinics maintained by land grant colleges and universities; and

(2) increase the capacity, technical infrastructure, and information-sharing capabilities of laboratories described in paragraph (1).

SEC. 8. VETERINARIAN ACCREDITATION.

Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations requiring that any veterinarian accredited by the Department of Agriculture shall be trained to recognize foreign animal diseases.

SEC. 9. REVIEW OF LEGAL AUTHORITY.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary, shall conduct a review of State and local laws relating to agroterrorism and biosecurity to determine—

(1) the extent to which the laws facilitate or impede the implementation of a current or proposed response plan relating to an agricultural disease;

(2) whether an injunction issued by a State court could—

(A) delay the implementation of a Federal response plan described in paragraph (1); or

(B) affect the extent to which an agricultural disease spreads; and

(3) the types and extent of legal evidence that may be required by a State court before a response plan described in paragraph (1) may be implemented.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress a report that describes the results of the review under subsection (a) (including any recommendations of the Attorney General).

By Ms. MIKULSKI (for herself, Mr. LAUTENBERG, Mrs. BOXER, and Mr. LEVIN):

S. 575. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for certain education expenses; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, I rise to introduce the ''Educational Opportunity for All Act.'' The core of the American Dream is getting a college education and I want to make sure that every student has access to that dream. I want to help families who are trying to send their children to college and adults who are going back to school—for their first degree or their third. This $4,000 tuition tax credit will help students who are taking one night class at a community college to update their skills or four classes at a university to get their bachelor's degree. And my tax credit is refundable so it helps families who don't owe taxes.

Our middle class families are stressed and stretched. Families in my State of Maryland are worried—they're worried about their jobs and they're terrified of losing their healthcare when costs keep ballooning. Many are holding down more than one job to make ends meet. They're racing from carpools to work and back again. But most of all, they don't know how they can afford to send their kids to college. And they want to know what we in the United States Senate are doing to help them.

That's why I want to give every family sending a child to college a $4,000 per student per year tuition tax credit. My bill would give help to those who practice self help—the families who are working and saving to send their child to college or update their own skills.

College tuition is on the rise across America. Tuition at the University of Maryland has increased by almost 40 percent since 2002. Tuition for Baltimore Community College rose by $300 in one year. The average total cost of going to a 4-year public college is $10,635 per year, including tuition, fees, room and board. University of Maryland will cost more than $15,000 for a full time undergraduate student who lives on campus.

Financial Aid isn't keeping up with these rising costs. Pell Grants cover only 40 percent of average costs at 4-year public colleges. Twenty years ago, Pell Grants covered 80 percent of average costs. Our students are graduating with so much debt it's like their first mortgage. The average undergraduate student debt from college loans is almost $19,000. College is part of the American Dream; it shouldn't be part of the American financial nightmare.

Families are looking for help. I'm sad to say, the President doesn't offer them much hope. The Republican budget has all the wrong priorities. President Bush proposed increasing the maximum Pell Grant by just $100 to $4,150. I want to double Pell Grants. Instead of easing the burden on middle class families, the Republican budget helps out big business cronies with lavish tax breaks while eating into Social Security and creating deficits as far as the eye can see.

We need to do more to help middle class families afford college. We need to immediately increase the maximum Pell Grant to $4,500 and double it over the next 6 years. We need to make sure student loans are affordable. And we need a bigger tuition tax credit for the families stuck in the middle who aren't eligible for Pell Grants but still can't afford college.

A $4,000 refundable tax credit for tuition will go a long way. It will give middle class families some relief by helping the first-time student at our 4-year institutions like University of Maryland and the mid-career student at our terrific community colleges. A $4,000 tax credit would be 60 percent of the tuition at Maryland and enough to cover the cost of tuition at most community colleges. My bill would help make college affordable for everyone.

College education is more important than ever: 40 percent of new jobs in the next 10 years will require post-secondary education. College is important to families and it's important to our economy. To compete in the global economy, we need to make sure all our children have 21st century skills for 21st century jobs. And the benefits of education help not just the individual but society as a whole.

To have a safer America and a stronger economy, we need to have a smarter America. We need to invest in our human capital to create a world class workforce. That means making a college education affordable.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Educational Opportunity for All Act of 2005''.

SEC. 2. EDUCATIONAL OPPORTUNITY FOR ALL TAX CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. EDUCATIONAL OPPORTUNITY TAX CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the qualified tuition expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year).

''(2) PER STUDENT LIMITATION.—The credit allowed under this section shall not exceed $4,000 with respect to any individual.

''(b) ELECTION NOT TO HAVE SECTION APPLY.—A taxpayer may elect not to have this section apply with respect to the qualified tuition expenses of an individual for any taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED TUITION EXPENSES.—

''(A) IN GENERAL.—The term 'qualified tuition expenses' means tuition required for the enrollment or attendance of—

''(i) the taxpayer,

''(ii) the taxpayer's spouse, or

''(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

''(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

''(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include student activity fees, athletic fees, insurance expenses, or other fees or expenses unrelated to an individual's academic course of instruction.

''(D) JOB IMPROVEMENT INCLUDED.—Such term shall include tuition expenses described in subparagraph (A) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills.

''(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means an institution—

''(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of the Taxpayer Relief Act of 1997, and

''(B) which is eligible to participate in a program under title IV of such Act.

''(d) SPECIAL RULES.—

''(1) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

''(2) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS, ETC.—The amount of qualified tuition expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

''(A) a qualified scholarship which is excludable from gross income under section 117,

''(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

''(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

''(3) TREATMENT OF EXPENSES PAID BY DEPENDENT.—If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

''(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

''(B) qualified tuition expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

''(4) TREATMENT OF CERTAIN PREPAYMENTS.—If qualified tuition expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

''(5) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

''(6) COORDINATION WITH HOPE SCHOLARSHIP AND LIFETIME LEARNING CREDITS.—The qualified tuition and related expenses with respect to an individual for whom a Hope Scholarship Credit or the Lifetime Learning Credit under section 25A is allowed for the taxable year shall not be taken into account under this section.

''(7) NO CREDIT FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(8) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

''(e) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.''.

(b) REFUNDABILITY OF CREDIT.—Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ''or enacted by the Educational Opportunity for All Act of 2005''.

(c) CONFORMING AMENDMENTS.—

(1) Sections 135(d)(2)(A), 222(c)(2)(A), 529(c)(3)(B)(v)(II), and 530(d)(2)(C)(i)(II) of the Internal Revenue Code of 1986 are each amended by inserting ''or section 36'' after ''section 25A'' each place it appears.

(2) Section 6213(g)(2)(J) of such Code is amended by inserting ''or section 36(d)(1)'' after ''expenses)''.

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 36 and inserting the following:

''Sec. 36. Educational opportunity tax credit.

''Sec. 37. Overpayments of tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid after December 31, 2004, for education furnished in academic periods beginning after such date.

By Mr. BYRD:

S. 576. A bill to restore the prohibition on the commercial sale and slaughter of wild free-roaming horses and burros; to the Committee on Energy and Natural Resources.

Mr. BYRD. Mr. President, President Reagan was often fond of saying that ''there's nothing better for the inside of a man than the outside of a horse.'' So he surely would have been proud when, on November 18, 2004, during the closing days of the 108th Congress, the Senate passed a resolution introduced by our former colleague Senator Ben Nighthorse Campbell that designated December 13, 2004, as ''National Day of the Horse.'' The resolution encouraged the people of the United States to be mindful of the contribution of horses to the economy, history, and character of our great Nation. The resolution, S. Res. 452, included a provision that stated ''horses are a vital part of the collective experience of the United States and deserve protection and compassion.''

Beginning in the 1950's, public awareness was raised about the cruel and inhumane manner in which wild horses and burros were being rounded up on public lands and subsequently sent to slaughter. Velma B. Johnston, later known as Wild Horse Annie, led an effort to protect this symbol of the American West that captured the imagination of school children across the country. In 1959, which was my first year in the Senate, Congress passed legislation I was pleased to support that prohibited the use of motorized vehicles to hunt wild horses and burros on all public lands. But the bill, which came to be known as the ''Wild Horse Annie Act,'' did not include a program for the management of wild horses and burros in the United States.

It was not until 1971 that Congress passed the Wild Free-Roaming Horse and Burro Act. The law, which I also supported, established as national policy that ''wild free-roaming horses and burros shall be protected from capture, branding, harassment, and death'' and that ''no wild free-roaming horses or burros or their remains may be sold or transferred for consideration for processing into commercial products.''

The Bureau of Land Management (BLM) and the U.S. Forest Service were tasked with enforcement of the law on public lands. Unfortunately, several reports have documented the failure by the agencies to properly manage these animals. As a result, the BLM currently has approximately 22,000 wild horses and burros in holding facilities where their feeding and care use up nearly half of the agency's budget for wild horse and burro management.

The Wild Free-Roaming Horse and Burro Act had been the law of the land until President Bush signed the FY 2005 Omnibus Appropriations bill on December 8, 2004. Included in the omnibus appropriations bill was a provision that would require the BLM to put up for public sale any wild horse taken off the range that is more than 10 years old and any horse that has been unsuccessfully offered for adoption three times. The BLM has estimated that about 8,400 mustangs out of 22,000 being kept on seven sanctuaries meet that criteria.

Surely there are actions that can be taken by the BLM to ensure the proper operation of the wild horse and burro program without resorting to the slaughter of these animals. Instead of taking the time to make the changes necessary to ensure the proper management of wild horses, this provision reaches for the butcher knife instead.

In response, my friend and colleague from West Virginia, Rep. NICK JOE RAHALL, has introduced H.R. 297, a bill that would restore the prohibition on the commercial sale and slaughter of wild free-roaming horses and burros. I am pleased to join with him in his effort to overturn this egregious provision and reinstate Federal protections for one of the enduring symbols of the American frontier.

In closing, I quote from British poet Ronald Duncan's Ode to the Horse:

> Where in this wide world can a man find nobility without pride, friendship without envy or beauty without vanity? Here: where grace is laced with muscle and strength by gentleness confined. He serves without servility; he has fought without enmity. There is nothing so powerful, nothing less violent; there is nothing so quick, nothing less patient. England's past has been bourne on his back. All our history is his industry. We are his heirs; he our inheritance. The Horse.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 577. A bill to promote health care coverage for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join with my colleague from Wisconsin, Senator FEINGOLD, in introducing legislation to prohibit health insurers from denying benefits to plan participants if they are injured while engaging in legal recreational activities like skiing, snowmobiling, or horseback riding.

Among the many rules that were issued at the end of the Clinton Administration was one that was intended to ensure non-discrimination in health coverage in the group market. This rule was issued jointly on January 8, 2001, by the Department of Labor, the Internal Revenue Service and the Health Care Financing Administration—now the Centers for Medicare and Medicaid Services—in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

While I was pleased that the rule prohibits health plans and issuers from denying coverage to individuals who engage in certain types of recreational activities, such as skiing, horseback riding, snowmobiling or motorcycling, I am extremely concerned that it would allow insurers to deny health benefits for an otherwise covered injury that results from participation in these activities.

The rule states that: ''While a person cannot be excluded from a plan for engaging in certain recreational activities, benefits for a particular injury can, in some cases, be excluded based on the source of the injury.'' A plan could, for example, include a general exclusion for injuries sustained while

doing a specified list of recreational activities, even though treatment for those injuries—a broken arm for instance—would have been covered under the plan if the individual had tripped and fallen.

Because of this loophole, an individual who was injured while skiing or running could be denied health care coverage, while someone who is injured while drinking and driving a car would be protected.

This clearly is contrary to Congressional intent. One of the purposes of HIPAA was to prohibit plans and issuers from establishing eligibility rules for health coverage based on certain health-related factors, including evidence of insurability. To underscore that point, the conference report language stated that ''the inclusion of evidence of insurability in the definition of health status is intended to ensure, among other things, that individuals are not excluded from health care coverage due to their participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing and other similar activities.'' The conference report also states that ''this provision is meant to prohibit insurers or employers from excluding employees in a group from coverage or charging them higher premiums based on their health status and other related factors that could lead to higher health costs.''

Millions of Americans participate in these legal and common recreational activities which, if practiced with appropriate precautions, do not significantly increase the likelihood of serious injury. Moreover, in enacting HIPAA, Congress simply did not intend that people would be allowed to purchase health insurance only to find out, after the fact, that they have no coverage for an injury resulting from a common recreational activity. If this rule is allowed to stand, millions of Americans will be forced to forgo recreational activities that they currently enjoy lest they have an accident and find out that they are not covered for needed care resulting from that accident.

The legislation that we are introducing today will clarify that individuals participating in activities routinely enjoyed by millions of Americans cannot be denied access to health care coverage or health benefits as a result of their activities. The bill should not be controversial. In fact, it passed the Senate by unanimous consent last November. Unfortunately, however, the House did not have time to act before the end of the Congress.

I am therefore hopeful that we will be able to move quickly on this legislation this year, and I urge all of my colleagues to join us as cosponsors.

Mr. LAUTENBERG. Mr. President, we have the benefit of many resources that provide us with a wealth of information: our dedicated staffs, the agencies of the Federal Government, and the many interested citizens and groups who follow issues.

We rely every day on the information we get from all these sources. But we also rely on plain old common sense. I rise today to introduce a bill that is based on common sense.

The premise is this: if we think somebody is a terrorist or has ties to terrorism, and that person purchases a deadly weapon, we need to know about it and keep track of it.

The bill I am introducing is called the ''Terrorist Apprehension Record Retention (TARR) Act.'' I am introducing it in response to a report that Senator BIDEN and I requested from the Government Accountability Office (GAO).

The report examined the practices of the National Instant Criminal Background Checks system (NICS) in conducting background checks of people who are on the Federal terrorist watch list and who try to purchase firearms.

The GAO found that from February 3 through June 30 of last year—a period of just five months—a total of 44 known or suspected terrorists attempted to purchase firearms. The GAO Report is available at http://www.gao.gov/new.items/d05127.pdf.

In 35 of these cases, the FBI authorized the transactions to proceed because its field agents were unable to find any disqualifying information, such as felony convictions or illegal immigrant status, within the federally prescribed three business days.

FBI officials told GAO investigators that from June through October 2004, the FBI's NICS handled an additional 14 transactions involving known or suspected terrorists. Of these 14 transactions, the FBI allowed 12 to proceed and denied 2 based on prohibiting information.

These people who are on the terrorist watch list are not even allowed to board a commercial airliner. Yet most of them were allowed to purchase firearms.

Some would say that defies common sense—but it gets worse.

After most of the people with suspected terrorist connections were allowed to purchase these deadly weapons, the FBI was forced to destroy the records of the transactions within 24 hours after the FBI had approved the sale.

These records were destroyed pursuant to the ''Tiahrt Amendment'' which was implemented last July.

The GAO also found that Department of Justice procedures prohibit the NICS from sharing information about gun sales to suspected terrorists with counterterrorism officials.

This restriction of information-sharing is based on the belief at DOJ that information gathered by NICS should not be used for law enforcement purposes or to fight the war against terror. This is despite the fact that FBI counterterrorism officials said that it would help them fight the war on terror if they were to routinely receive all available personal identifying information and other details from valid-match background checks of known or suspected terrorists.

So, not only are people suspected of having links to terrorism allowed to purchase deadly weapons, but then we don't even tell our counterterrorism agents about it—and we destroy the records!

This doesn't seem like common sense to me.

In fact, it seems like a policy that not only allows terrorists to acquire weapons, but then helps them cover their tracks.

In light of the findings in this report, Senators CORZINE, SCHUMER, CLINTON, FEINSTEIN, MIKULSKI, REED and KENNEDY are joining me in introducing the TARR Act, which would do two very important things.

First, the bill would require the Federal Government, specifically the NICS and FBI, to maintain for 10 years all records related to a NICS transaction involving a valid match to the VGTOF terrorist records—a suspected or known terrorist.

It is outrageous that one unit of the FBI—NICS—has information that could help us win the war against terrorism, but that information is deleted.

Second, the TARR Act would require all information related to the transactions involving a valid match to the VGTOF terrorist records must be shared with all appropriate Federal and State counterterrorism officials. Both FBI counterterrorism agents and State counterterrorism agencies should have access to this potentially valuable information. I encourage my colleagues to support this common sense legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD. I also ask unanimous consent that an article from the March 8, 2005 edition of the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Terrorist Apprehension and Record Retention Act of 2005'' or the ''TARR Act of 2005''.

SEC. 2. IDENTIFICATION OF TERRORISTS.

(a) IN GENERAL.—Section 922(t) of title 18, United States Code, is amended by inserting after paragraph (6) the following:

''(7) If the national criminal background check system indicates that a person attempting to purchase a firearm or applying for a State permit to possess, acquire, or carry a firearm is identified as a known or suspected member of a terrorist organization in records maintained by the Department of Justice or the Department of Homeland Security, including the Violent Gang and Terrorist Organization File, or records maintained by the Intelligence Community, including records maintained under section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (50 U.S.C. 404n-2)—

''(A) all information related to the prospective transaction shall automatically and immediately be transmitted to the appropriate

Federal and State counterterrorism officials, including the Federal Bureau of Investigation;

''(B) the Federal Bureau of Investigation shall coordinate the response to such an event; and

''(C) all records generated in the course of the check of the national criminal background check system, including the ATF Form 4473, that are obtained by Federal and State officials shall be retained for a minimum of 10 years.''.

(b) CONFORMING AMENDMENTS.—

(1) TITLE 18.—Section 922(t)(2)(C) of title 18, United States Code, is amended by inserting after ''transfer'' the following: '', except as provided in paragraph (7)''.

(2) OTHER LAW.—Section 617(a)(2) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (118 Stat. 95) is amended by inserting after ''or State Law'' the following: '', except for information required to be maintained by section 922(t)(7) of title 18, United States Code''.

[From the New York Times, March 8, 2005]

TERROR SUSPECTS BUYING FIREARMS, REPORT FINDS

(By Eric Lichtblau)

WASHINGTON, March 7.—Dozens of terror suspects on federal watch lists were allowed to buy firearms legally in the United States last year, according to a Congressional investigation that points up major vulnerabilities in federal gun laws.

People suspected of being members of a terrorist group are not automatically barred from legally buying a gun, and the investigation, conducted by the Government Accountability Office, indicated that people with clear links to terrorist groups had regularly taken advantage of this gap.

Since the Sept. 11 terrorist attacks, law enforcement officials and gun control groups have voiced increasing concern about the prospect of a terrorist walking into a gun shop, legally buying an assault rifle or other type of weapon and using it in an attack.

The G.A.O. study offers the first full-scale examination of the possible dangers posed by gaps in the law, Congressional officials said, and it concludes that the Federal Bureau of Investigation ''could better manage'' its gun-buying records in matching them against lists of suspected terrorists.

F.B.I. officials maintain that they are hamstrung by laws and policies restricting the use of gun-buying records because of concerns over the privacy rights of gun owners.

At least 44 times from February 2004 to June, people whom the F.B.I. regards as known or suspected members of terrorist groups sought permission to buy or carry a gun, the investigation found.

In all but nine cases, the F.B.I. or state authorities who handled the requests allowed the applications to proceed because a check of the would-be buyer found no automatic disqualification like being a felon, an illegal immigrant or someone deemed ''mentally defective,'' the report found.

In the four months after the formal study ended, the authorities received an additional 14 gun applications from terror suspects, and all but 2 of those were cleared to proceed, the investigation found. In all, officials approved 47 of 58 gun applications from terror suspects over a nine-month period last year, it found.

The gun buyers came up as positive matches on a classified internal F.B.I. watch list that includes thousands of terrorist suspects, many of whom are being monitored, trailed or sought for questioning as part of terrorism investigations into Islamic-based, militia-style and other groups, official said. G.A.O. investigators were not given access to the identities of the gun buyers because of those investigations.

The report is to be released on Tuesday, and an advance copy was provided to The New York Times.

Senator Frank R. Lautenberg, Democrat of New Jersey, who requested the study, plans to introduce legislation to address the problem in part by requiring federal officials to keep records of gun purchases by terror suspects for a minimum of 10 years. Such records must now be destroyed within 24 hours as a result of a change ordered by Congress last year. Mr. Lautenberg maintains that the new policy has hindered terrorism investigations by eliminating the paper trail on gun purchases.

''Destroying these records in 24 hours is senseless and will only help terrorists cover their tracks,'' Mr. Lautenberg said Monday. ''It's an absurd policy.''

He blamed what he called the Bush administration's ''twisted allegiances'' to the National Rifle Association for the situation.

The N.R.A. and gun rights supporters in Congress have fought—successfully, for the most part—to limit the use of the F.B.I.'s national gun-buying database as a tool for law enforcement investigators, saying the database would amount to an illegal registry of gun owners nationwide.

The legal debate over how gun records are used became particularly contentious months after the Sept. 11 attacks, when it was disclosed that the Justice Department and John Ashcroft, then the attorney general, had blocked the F.B.I. from using the gun-buying records to match against some 1,200 suspects who were detained as part of the Sept. 11 investigation. Mr. Ashcroft maintained that using the records in a criminal investigation would violate the federal law that created the system for instant background gun checks, but Justice Department lawyers who reviewed the issue said they saw no such prohibition.

In response to the report, Mr. Lautenberg also plans to ask Attorney General Alberto R. Gonzales to assess whether people listed on the F.B.I.'s terror watch list should be automatically barred from buying a gun. Such a policy would require a change in federal law.

F.B.I. officials acknowledge shortcomings in the current approach to using gun-buying records in terror cases, but they say they are somewhat constrained by gun laws as established by Congress and interpreted by the Justice Department.

''We're in a tough position,'' said an F.B.I. official who spoke on condition of anonymity because the report has not been formally released. ''Obviously, we want to keep guns out of the hands of terrorists, but we also have to be mindful of privacy and civil rights concerns, and we can't do anything beyond what the law allows us to do.''

After initial reluctance from Mr. Ashcroft over Second Amendment concerns, the Justice Department changed its policy in February 2004 to allow the F.B.I. to do more cross-checking between gun-buying records and terrorist intelligence.

Under the new policy, millions of gun applications are run against the F.B.I.'s internal terrorist watch list, and if there is a match, bureau field agents or other counterterrorism personnel are to be contacted to determine whether they have any information about the terror suspect.

In some cases, the extra review allowed the F.B.I. to block a gun purchase by a suspected terrorist that might otherwise have proceeded because of a lag time in putting information into the database, the accountability office's report said.

In one instance last year, follow-up information provided by F.B.I. field agents revealed that someone on a terror watch list was deemed ''mentally defective,'' even though that information had not yet made its way into the gun database. In a second case, field agents disclosed that an applicant was in the country illegally. Both applications were denied.

Even so, the report concluded that the Justice Department should clarify what information could and could not be shared between gun-buying administrators and terrorism investigators. It also concluded that the F.B.I. should keep closer track of the performance of state officials who handle gun background checks in lieu of the F.B.I.

''Given that these background checks involve known or suspected terrorists who could pose homeland security risks,'' the report said, ''more frequent F.B.I. oversight or centralized management would help ensure that suspected terrorists who have disqualifying factors do not obtain firearms in violation of the law.''

By Mr. LIEBERMAN (for himself, Mr. BROWNBACK, Mrs. CLINTON, Mr. SANTORUM, Ms. LANDRIEU, Mr. DURBIN, and Mr. ENSIGN):

S. 579. A bill to amend the Public Health Service Act to authorize funding for the establishment of a program on children and the media within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children, to the Committee on Health, Education, Labor, and Pensions.

Mr. LIEBERMAN. Mr. President, I rise today to introduce, along with Senators BROWNBACK, CLINTON, SANTORUM, LANDRIEU, ENSIGN and DURBIN, the Children and Media Research Advancement Act, or CAMRA Act. We believe there is an urgent need to establish a federal role for targeting research on the impact of media on children. From the cradle to the grave, our children now live and develop in a world of media—a world that is increasingly digital, and a world where access is at their fingertips. This emerging digital world is well known to our children, but its effects on their development are not well understood. Young people today are spending an average of 6 and a half hours with media each day. For those who are under age 6, two hours of exposure to screen media each day is common, even for those who are under age 2. That is about as much time as children under age 6 spend playing outdoors, and it is much more time than they spend reading or being read to by their parents. How does this investment of time affect children's physical development, their cognitive development, or their moral values? Unfortunately, we still have very limited information about how media, particularly the newer interactive media, affect children's development. Why? We have not charged any Federal agency with ensuring an ongoing funding base to establish a coherent research agenda about the impact of media on children's lives. This lack of a coordinated government-sponsored effort to understand the effects of media on children's development is truly an oversight on our part, as the potential payoffs for this kind of knowledge are enormous.

Consider our current national health crisis of childhood obesity. The number of U.S. children and teenagers who are overweight has more than tripled from the 1960's through 2002. We think that media exposure is partly the cause of this epidemic. Is it? Is time spent viewing screens and its accompanying sedentary lifestyle contributing to childhood and adolescent obesity? Or is the constant bombardment of advertisements for sugar-coated cereals, snack foods, and candy that pervade children's television advertisements the culprit? How do the newer online forms of ''stealth marketing'', such as advergaming where food products are embedded in computer games, affect children's and adolescents' purchasing patterns? What will happen when pop-up advertisements begin to appear on children's cell phones that specifically target them for the junk food that they like best at a place where that food is easily obtainable? The answer to the obesity and media question is complex. A committee at the National Academy of Sciences is currently charged with studying the link between media advertising and childhood obesity. Will the National Academy of Sciences panel have the data they need to answer this important question? A definitive answer has the potential to save a considerable amount of money in other areas of our budget. For example, child health care costs that are linked to childhood obesity issues could be reduced by understanding and altering media diets.

Or take the Columbine incident. After two adolescent boys shot and killed some of their teachers, classmates, and then turned their guns on themselves at Columbine High School, we asked ourselves if media played some role in this tragedy. Did these boys learn to kill in part from playing first-person shooter video games like Doom where they acted as a killer? Were they rehearsing criminal activities when playing this game? We looked to the research community for an answer. In the violence and media area, Congress had passed legislation in the past so that research was conducted about the relationship between media violence and childhood aggression, and as a result, we knew more. Even though much of this data base was older and involved the link between exposure to violent television programs and childhood aggression, some answers were forthcoming about how the Columbine tragedy could have taken place. Even so, there is still a considerable amount of speculation about the more complex questions. Why did these particular boys, for example, pull the trigger in real life while others who played Doom confine their aggressive acts to the gaming context? We need to be able to answer questions about which children under what circumstances will translate game playing into real-life lethal actions. Investing in media research could potentially reduce our budgets associated with adolescent crime and delinquency as well as reduce real-life human misery and suffering.

Many of us believe that our children are becoming increasingly materialistic. Does exposure to commercial advertising and the ''good life'' experienced by media characters partly explain materialistic attitudes? We're not sure. Recent research using brain-mapping techniques finds that an adult who sees images of desired products demonstrates patterns of brain activation that are typically associated with reaching out with a hand. How does repeatedly seeing attractive products affect our children and their developing brains? What will happen when our children will be able to click on their television screen and go directly to sites that advertise the products that they see in their favorite programs? Or use their cell phones to pay for products that they want in the immediate environment? Exactly what kind of values are we cultivating in our children, and what role does exposure to media content play in the development of those values?

A report linked very early television viewing with later symptoms that are common in children who have attention deficit disorders. However, we don't know the direction of the relationship. Does television viewing cause attention deficits, or do children who have attention deficits find television viewing experiences more engaging than children who don't have attention problems? Or do parents whose children have difficulty sustaining attention let them watch more television to encourage more sitting and less hyperactive behavior? How will Internet experiences, particularly those where children move rapidly across different windows, influence attention patterns and attention problems? Once again, we don't know the answer. If early television exposure does disrupt the development of children's attention patterns, resulting in their placement in special education programs, actions taken to reduce screen exposure during the early years could lead to subsequent reductions in children's need for special education classes, thereby saving money while fostering children's development in positive ways.

We want no child left behind in the 21st century. Many of us believe that time spent with computers is good for our children, teaching them the skills that they will need for success in the 21st century. Are we right? How is time spent with computers different from time spent with television? What are the underlying mechanisms that facilitate or disrupt children's learning from these varying media? Can academic development be fostered by the use of interactive online programs designed to teach as they entertain? In the first six years of life, Caucasian more so than African American or Latino children have Internet access from their homes. Can our newer interactive media help ensure that no child is left behind, or will disparities in access result in leaving some behind and not others?

The questions about how media affect the development of our children are clearly important, abundant, and complex. Unfortunately, the answers to these questions are in short supply. Such gaps in our knowledge base limit our ability to make informed decisions about media policy.

We know that media are important. Over the years, we have held numerous hearings in these chambers about how exposure to media violence affects childhood aggression. We passed legislation to maximize the documented benefits of exposure to educational media, such as the Children's Television Act which requires broadcasters to provide educational and informational television programs for children. Can we foster children's moral values when they are exposed to prosocial programs that foster helping, sharing, and cooperating like those that have come into being as a result of the Children's Television Act? We acted to protect our children from unfair commercial practices by passing the Children's Online Privacy Protection Act which provides safeguards from exploitation for our youth as they explore the Internet, a popular pastime for them. Yet the Internet has provided new ways to reach children with marketing that we barely know is taking place, making our ability to protect our children all the more difficult. We worry about our children's inadvertent exposure to online pornography—about how that kind of exposure may undermine their moral values and standards of decency. In these halls of Congress, we acted to protect our children by passing the Communications Decency Act, the Child Online Protection Act, and the Children's Internet Protection Act to shield children from exposure to sexually-explicit online content that is deemed harmful to minors. While we all agree that we need to protect our children from online pornography, we know very little about how to address even the most practical of questions such as how to prevent children from falling prey to adult strangers who approach them online. There are so many areas in which our understanding is preliminary at best, particularly in those areas that involve the effects of our newer digital media.

In order to ensure that we are doing our very best for our children, the behavioral and health recommendations and public policy decisions we make should be based on objective behavioral, social, and scientific research. Yet no Federal research agency has responsibility for overseeing and setting a coherent media research agenda that can guide these policy decisions. Instead, Federal agencies fund media research in a piecemeal fashion, resulting in a patch work quilt of findings. We can do better than that.

The bill we are introducing today would remedy this problem. The

CAMRA Act will provide an overarching view of media effects by establishing a program devoted to Children and Media within the National Institute of Child Health and Human Development. This program of research, to be vetted by the National Academy of Sciences, will fund and energize a coherent program of research that illuminates the role of media in children's cognitive, social, emotional, physical, and behavioral development. The research will cover all forms of electronic media, including television, movies, DVDs, interactive video games, cell phones, and the Internet, and will encourage research involving children of all ages—even babies and toddlers. The bill also calls for a report to Congress about the effectiveness of this research program in filling this void in our knowledge base. In order to accomplish these goals, we are authorizing $90 million dollars to be phased in gradually across the next five years. The cost to our budget is minimal and can well result in significant savings in other budget areas.

Our Nation values the positive, healthy development of our children. Our children live in the information age, and our country has one of the most powerful and sophisticated information technology systems in the world. While this system entertains them, it is not harmless entertainment. Media have the potential to facilitate the healthy growth of our children. They also have the potential to harm. We have a stake in finding out exactly what that role is. We have a responsibility to take action. Access to the knowledge that we need for informed decision-making requires us to make an investment: an investment in research, an investment in and for our children, an investment in our collective future. The benefits to our youth and our nation's families are immeasurable.

By passing the Children and Media Research Advancement Act, we can advance knowledge and enhance the constructive effects of media while minimizing the negative ones. We can make future media policies that are grounded in a solid knowledge base. We can be proactive, rather than reactive. In so doing, we build a better nation for our youth, fostering the kinds of values that are the backbone of this great nation of ours, and we create a better foundation to guide future media policies about the digital experiences that pervade our children's daily lives.

I ask unanimous consent that the text of the bill be printed in the RECORD.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children and Media Research Advancement Act'' or the ''CAMRA Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Congress has recognized the important role of electronic media in children's lives when it passed the Children's Television Act of 1990 (Public Law 101-437) and the Telecommunications Act of 1996 (Public Law 104-104), both of which documented public concerns about how electronic media products influence children's development.

(2) Congress has held hearings over the past several decades to examine the impact of specific types of media products such as violent television, movies, and video games on children's and adolescent's health and development. These hearings and other public discussions about the role of media in children's and adolescent's development require behavioral and social science research to inform the policy deliberations.

(3) There are important gaps in our knowledge about the role of electronic media and in particular, the newer interactive digital media, in children's and adolescent's healthy development. The consequences of very early screen usage by babies and toddlers on children's cognitive growth are not yet understood, nor has a research base been established on the psychological consequences of high definition interactive media and other format differences for child and adolescent viewers.

(4) Studies have shown that children who primarily watch educational shows on television during their preschool years are significantly more successful in school 10 years later even when critical contributors to the child's environment are factored in, including their household income, parent's education, and intelligence.

(5) The early stages of childhood are a critical formative period for development. Virtually every aspect of human development is affected by the environments and experiences that one encounters during his or her early childhood years, and media exposure is an increasing part of every child's social and physical environment.

(6) As of the late 1990's, just before the National Institute of Child Health and Human Development funded 5 studies on the role of sexual messages in the media on children's and adolescent's sexual attitudes and sexual practices, a review of research in this area found only 15 studies ever conducted in the United States on this topic, even during a time of growing concerns about HIV infection.

(7) In 2001, a National Academy of Sciences study group charged with studying Internet pornography exposure on youth found virtually no literature about how much children and adolescents were exposed to Internet pornography or how such content impacts their development.

(8) In order to develop strategies that maximize the positive and minimize the negative effects of each medium on children's physical, cognitive, social, and emotional development, it would be beneficial to develop a research program that can track the media habits of young children and their families over time using valid and reliable research methods.

(9) Research about the impact of the media on children and adolescents is not presently supported through one primary programmatic effort. The responsibility for directing the research is distributed across disparate agencies in an uncoordinated fashion, or is overlooked entirely. The lack of any centralized organization for research minimizes the value of the knowledge produced by individual studies. A more productive approach for generating valuable findings about the impact of the media on children and adolescents would be to establish a single, well-coordinated research effort with primary responsibility for directing the research agenda.

(10) Due to the paucity of research about electronic media, educators and others interested in implementing electronic media literacy initiatives do not have the evidence needed to design, implement, or assess the value of these efforts.

(b) PURPOSE.—It is the purpose of this Act to enable the National Institute of Child Health and Human Development to—

(1) examine the role and impact of electronic media in children's and adolescent's cognitive, social, emotional, physical, and behavioral development; and

(2) provide for a report to Congress containing the empirical evidence and other results produced by the research funded through grants under this Act.

SEC. 3. RESEARCH ON THE ROLE AND IMPACT OF ELECTRONIC MEDIA IN THE DEVELOPMENT OF CHILDREN AND ADOLESCENTS.

Subpart 7 of part C of title IV of the Public Health Service Act (42 U.S.C. 285g et seq.) is amended by adding at the end the following:

''SEC. 452H. RESEARCH ON THE ROLE AND IMPACT OF ELECTRONIC MEDIA IN THE DEVELOPMENT OF CHILDREN AND ADOLESCENTS.

''(a) IN GENERAL.—The Director of the Institute shall enter into appropriate arrangements with the National Academy of Science in collaboration with the Institute of Medicine to establish an independent panel of experts to review, synthesize and report on research, theory, and applications in the social, behavioral, and biological sciences and to establish research priorities regarding the positive and negative roles and impact of electronic media use, including television, motion pictures, DVD's, interactive video games, and the Internet, and exposure to that content and medium on youth in the following core areas of child and adolescent development:

''(1) COGNITIVE.—The role and impact of media use and exposure in the development of children and adolescents within such cognitive areas as language development, attention span, problem solving skills (such as the ability to conduct multiple tasks or 'multitask'), visual and spatial skills, reading, and other learning abilities.

''(2) PHYSICAL.—The role and impact of media use and exposure on children's and adolescent's physical coordination, diet, exercise, sleeping and eating routines, and other areas of physical development.

''(3) SOCIO-BEHAVIORAL.—The influence of interactive media on children's and adolescent's family activities and peer relationships, including indoor and outdoor play time, interaction with parents, consumption habits, social relationships, aggression, prosocial behavior, and other patterns of development.

''(b) PILOT PROJECTS.—During the first year in which the National Academy of Sciences panel is summarizing the data and creating a comprehensive research agenda in the children and adolescents and media area under subsection (a), the Secretary shall provide for the conduct of initial pilot projects to supplement and inform the panel in its work. Such pilot projects shall consider the role of media exposure on—

''(1) cognitive and social development during infancy and early childhood; and

''(2) the development of childhood and adolescent obesity, particularly as a function of media advertising and sedentary lifestyles that may co-occur with heavy media diets.

''(c) RESEARCH PROGRAM.—Upon completion of the review under subsection (a), the Director of the National Institute of Child Health and Human Development shall develop and implement a program that funds

additional research determined to be necessary by the panel under subsection (a) concerning the role and impact of electronic media in the cognitive, physical, and sociobehavioral development of children and adolescents with a particular focus on the impact of factors such as media content, format, length of exposure, age of child or adolescent, and nature of parental involvement. Such program shall include extramural and intramural research and shall support collaborative efforts to link such research to other National Institutes of Health research investigations on early child health and development.

''(d) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall—

''(1) prepare and submit to the Director of the Institute an application at such time, in such manner, and containing such information as the Director may require; and

''(2) agree to use amounts received under the grant to carry out activities that establish or implement a research program relating to the effects of media on children and adolescents pursuant to guidelines developed by the Director relating to consultations with experts in the area of study.

''(e) USE OF FUNDS RELATING TO THE MEDIA'S ROLE IN THE LIFE OF A CHILD OR ADOLESCENT.—An entity shall use amounts received under a grant under this section to conduct research concerning the social, cognitive, emotional, physical, and behavioral development of children or adolescents as related to electronic mass media, including the areas of—

''(1) television;

''(2) motion pictures;

''(3) DVD's;

''(4) interactive video games;

''(5) the Internet; and

''(6) cell phones.

''(f) REPORTS.—

''(1) REPORT TO DIRECTOR.—Not later than 12 months after the date of enactment of this section, the panel under subsection (a) shall submit the report required under such subsection to the Director of the Institute.

''(2) REPORT TO CONGRESS.—Not later than December 31, 2011, the Director of the Institute shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate, and Committee on Education and the Workforce of the House of Representatives a report that—

''(A) summarizes the empirical evidence and other results produced by the research under this section in a manner that can be understood by the general public;

''(B) places the evidence in context with other evidence and knowledge generated by the scientific community that address the same or related topics; and

''(C) discusses the implications of the collective body of scientific evidence and knowledge regarding the role and impact of the media on children and adolescents, and makes recommendations on how scientific evidence and knowledge may be used to improve the healthy developmental and learning capacities of children and adolescents.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $10,000,000 for fiscal year 2006;

''(2) $15,000,000 for fiscal year 2007;

''(3) $15,000,000 for fiscal year 2008;

''(4) $25,000,000 for fiscal year 2009; and

''(5) $25,000,000 for fiscal year 2010.''.

By Mr. SMITH (for himself, Mr. CONRAD, Mr. STEVENS, Mr. HAGEL, and Mr. CHAFEE):

S. 580. A bill to amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Real Estate Mortgage Investment Conduit Modernization Act. I am pleased to join my colleague and friend, Senator KENT CONRAD, in introducing this legislation to accelerate economic growth for America.

A Real Estate Mortgage Investment Conduit (REMIC) is a tax vehicle created by Congress in 1986 to support the housing market and investment in real estate by making it simpler to issue real estate backed securities.

By pooling real estate loans into mortgage backed securities, REMICs offer residential and commercial real estate borrowers access to capital that would not otherwise be available. REMICs enable commercial banks and other lenders to sell their loans in the capital markets, thereby freeing up assets for additional lending and investments. Because they contribute to the efficiency and liquidity of the U.S. real estate markets, REMICs help to minimize the costs of residential and commercial real estate borrowing and to spur real estate development and rehabilitation.

REMICs play a critical role in providing capital for residential and commercial mortgages. As of September 30, 2004, the value of single-family, multifamily and commercial-mortgage backed REMICs outstanding was $2.2 trillion. While the current volume of REMIC transactions reflects their important role in this market, certain changes to the tax code will eliminate impediments and unleash even greater potential. Current rules that govern REMICs often prevent many common loan modifications that facilitate loan administration and ensure repayment of investors.

Unfortunately, the legislation that created REMICs has not changed in nearly 20 years. Our legislation will update the REMIC provisions of the tax code. These proposed changes are simple, non-controversial, and will greatly enhance the ability of commercial real estate interests to obtain capital for financing new construction projects.

These changes would ultimately benefit the entire real estate community, including local real estate owners, builders, construction managers as well as engineering, architectural and interior design firms that provide real estate services. Firms that offer services to support real estate sales will also be assisted. The end result is that these changes would accelerate the creation of jobs and economic activity throughout the U.S., and would have a positive effect on federal and state tax revenues. By encouraging property renovations and expansions, these changes would strengthen the local property tax base in towns and cities across America.

We urge our colleagues to work with us to enact this legislation to spur economic and employment growth in real estate, the construction trades, and the building materials industry.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 580

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN MODIFICATIONS PERMITTED TO QUALIFIED MORTGAGES HELD BY A REMIC OR A GRANTOR TRUST.

(a) QUALIFIED MORTGAGES HELD BY A REMIC.—

(1) IN GENERAL.—Paragraph (3) of section 860G(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(C) QUALIFIED MODIFICATIONS.—

''(i) IN GENERAL.—An obligation shall not fail to be treated as a qualified mortgage solely because of a qualified modification of such obligation.

''(ii) QUALIFIED MODIFICATION.—For purposes of this section, the term 'qualified modification' means, with respect to any obligation, any amendment, waiver, or other modification which is treated as a disposition of such obligation under section 1001 if such amendment, waiver or other modification does not—

''(I) extend the final maturity date of the obligation,

''(II) increase the outstanding principal balance under the obligation (other than the capitalization of accrued, unpaid interest),

''(III) result in a release of an interest in real property securing the obligation such that the obligation is not principally secured by an interest in real property (determined after giving effect to the release), or

''(IV) result in an instrument or property right which is not debt for Federal income tax purposes.

''(iii) DEFAULTS.—Under regulations prescribed by the Secretary, any amendment, waiver, or other modification of an obligation which is in default or with respect to which default is reasonably foreseeable may be treated as a qualified modification for purposes of this section.

''(iv) DEFEASANCE WITH GOVERNMENT SECURITIES.—The requirements of clause (ii)(III) shall be treated as satisfied if, after the release described in such clause, the obligation is principally secured by Government securities and the amendment, waiver, or other modification to such obligation satisfies such requirements as the Secretary may prescribe.''.

(2) EXCEPTION FROM PROHIBITED TRANSACTION RULES.—Subparagraph (A) of section 860F(a)(2) of such Code is amended—

(A) by striking ''or'' at the end of clause (iii);

(B) by striking the period at the end of clause (iv) and inserting ''or''; and

(C) by adding at the end the following new clause:

''(v) a qualified modification (as defined in section 860G(a)(3)(C)).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 860G(a)(3) of such Code is amended--

(i) by redesignating clauses (i) and (ii) of subparagraph (A) as subclauses (I) and (II), respectively;

(ii) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(iii) by striking 'The term' and inserting the following:

''(A) IN GENERAL.—The term''; and

(iv) by striking ''For purposes of subparagraph (A)'' and inserting the following:

''(B) TENANT-STOCKHOLDERS OF COOPERATIVE HOUSING CORPORATIONS.—For purposes of subparagraph (A)(i)''.

(B) Section 860G(a)(3)(A)(iv) of such Code (as redesignated by subparagraph (A)) is amended—

(i) by striking ''clauses (i) and (ii) of subparagraph (A)'' and inserting ''subclauses (I) and (II) of clause (i)''; and

(ii) by striking ''subparagraph (A) (without regard to such clauses)'' and inserting ''clause (i) (without regard to such subclauses)''.

(b) QUALIFIED MORTGAGES HELD BY A GRANTOR TRUST.—Section 672 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(g) SPECIAL RULE FOR CERTAIN INVESTMENT TRUSTS.—A grantor shall not fail to be treated as the owner of any portion of a trust under this subpart solely because such portion includes one or more obligations with respect to which a qualified modification (within the meaning of section 860G(a)(3)(C)) has been, or may be, made under the terms of such trust.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amendments, waivers, and other modifications made after the date of enactment of this Act.

By Ms. LANDRIEU:

S. 583. A bill to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, tax day is right around the corner; just over a month away. For most Americans, April 15 is rather routine. You spend several days or weeks determining the amount you owe and you pay it. But for Christina and Raymond F., two of my constituents—I will not use their last name to maintain their privacy—of Avondale, LA, this upcoming tax day is going to be anything but routine. Earlier this year, Christina and Raymond received a letter from their parish government informing them that they must add $45,000 to their gross income this year.

You see, Christina and Raymond's home is located in a flood zone. That is not unusual in Louisiana. Twenty percent of the coastal zone of my state lies below sea level, including 80 percent of our largest city New Orleans. In order to protect their home from rising waters, they applied to their local parish to get flood mitigation assistance to raise their home above the base flood elevation in their area. To qualify, they had to raise $20,000, which they did by refinancing their home, and the parish paid the remaining $45,000 through FEMA's National Flood Insurance Program. What Christina and Raymond did not realize was that at the very same time that they were having this work done on their home, the Internal Revenue Service had decided that FEMA disaster mitigation assistance should be taxable. So now, this couple is going to have to pay taxes on $45,000 even though they never saw a dime of this money.

This news hit this family like a Category 4 hurricane. When Christina called my office she thought she said she would have to sell her house in order pay the IRS. This is a family with modest means, living in a neighborhood that they describe as working class. Her husband's medical costs are astronomical—$1,400 per month for his medication alone. The house is worth about $100,000 and the mitigation work did not add a significant amount to its value according to an appraisal they received. You can imagine that under these circumstances, the taxes on an additional $45,000 would wipe them out.

In a place like Louisiana where hurricanes and floods are as much a part of life as crawfish boils and Mardi Gras, the key to our peace of mind is the National Flood Insurance Program administered by FEMA. In Louisiana, 377,000 property owners participate in the National Flood Insurance Program. It is a real Godsend to the people of my state.

In addition, the National Flood Insurance Program provides funding for property owners to flood-proof their homes through the flood mitigation grant program. FEMA distributes these grant funds to the states which then pass them along to local communities. The local communities select properties for mitigation and contract for the mitigation services. Communities use these funds to put homes on stilts, improve drainage on property, and to acquire flood proofing materials. These mitigation grants encourage property owners to take responsible steps to lessen the potential for loss of life and property damage due to future flooding. The grants also have the added benefit of saving money in the long term for the Flood Insurance program.

But the IRS has turned this valuable disaster preparedness and prevention program into a financial disaster for responsible property owners by making these payments taxable. The first time Christina and Raymond learned that this funding was taxable was when their local community sent them a letter at the beginning of this year.

All the people in my state ask for is a warning and an opportunity to protect themselves, their homes, and their loved ones from these disasters. Through the state-of-the-art systems developed by the National Weather Service, we can get a warning about a hurricane. We have sophisticated radar to track these storms as they move through the Gulf of Mexico, or up the East Coast. When a Category 4 is coming we can prepare and pray. The IRS is making us prepare and pay.

This tax is unfair, unexpected, and an unfortunate policy decision. Unfair and unexpected because no one told Christina and Raymond that they would be taxed for accepting FEMA disaster mitigation assistance. The local officials in their parish were just as surprised as the property owners were. It is unfortunate policy because in the long term, the IRS will undercut the effectiveness of using mitigation as a means of decreasing future costs to the flood insurance program. It will force people to take risks that they will not be hit by a disaster.

Today, I am introducing legislation to protect these responsible property owners from this unfair tax. My bill excludes disaster mitigation assistance from gross income. I have made it retroactive to last year in order to protect those property owners who received assistance in 2004.

I understand that a companion measure has been introduced in the House of Representatives by Congressman MARK FOLEY of Florida. It is supported by a number of House members from states with high incidents of flooding and other natural disasters, many from Louisiana. I applaud their efforts.

But this is not a regional, special-interest bill. FEMA makes mitigation grants for a variety of hazards in addition to flooding: fire, tornadoes, earthquakes, thunderstorms, dam failures, and a host of others. This is not a problem just for properties that flood. So if your citizens have used a federal disaster mitigation program to help make their properties safer, the tax man will come for them too.

It is essential that the Congress consider this legislation and pass it as soon as possible. As I said at the start of my remarks, tax day is coming. We need to act to protect responsible property owners from paying this unfair tax.

By Mr. SALAZAR:

S. 584. A bill to require the Secretary of the Interior to allow the continued occupancy and use of certain land and improvements within Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 585. A bill to better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado; to the Committee on Health, Education, Labor, and Pensions.

Mr. SALAZAR. Mr. President, I rise today to introduce two pieces of legislation important to my great State of Colorado.

Last week, I introduced one bill and proudly cosponsored two others to make good on our Nation's promise to honor and care for our veterans. Today, I am introducing a bill to discharge our debt to another group of patriotic Americans who served our Nation during the cold war—our nuclear weapons workers.

Many Americans contributed to our victory over communism in the cold war, including dedicated and brave men and women working in the laboratories and factories that fashioned the nuclear weapons that helped bring the former Soviet Union to its knees. As a result of this patriotic service, many of these nuclear weapons workers contracted cancer and other disabling and fatal diseases.

In 2000, Congress recognized the sacrifices made by our nuclear weapons

workers by enacting the Energy Employees Occupational Injury Compensation Act to provide benefits to nuclear weapons workers for their work-related illnesses, or to their survivors when these illnesses took their lives

But today, a combination of missing records and bureaucratic red tape prevents many nuclear weapons workers from receiving the benefits that Congress intended, including many workers who served at the Rocky Flats facility in Colorado

Through five decades, men and women worked at Rocky Flats, producing plutonium, one of the most dangerous substances in creation, and crafting it into the triggers for America's nuclear arsenal. These men and women served a critical role in a program deemed essential to our national security by a succession of Presidents and Congresses. We owe them an enormous debt of gratitude.

These men and women were exposed to radioactive elements and other toxic compounds that we are still trying to identify, in amounts that we can only guess at. We don't know what they were exposed to, how much or when. Part of the problem is that the existing science and technology did not allow us to monitor accurately. Part of the problem is that critical records have been lost or, in many cases, were never created by the government and its contractors.

Thankfully, Congress had the foresight in the Energy Employees Act to realize that some workers might not be able to prove that their cancers were caused by their work in nuclear weapons facilities, whether due to the lack of records or other problems that make it difficult or impossible to determine the dose of radiation they received.

To protect these workers, Congress designated a Special Exposure Cohort to receive benefits if they suffered from one of the specified cancers known to be linked to radiation exposure

The bill I am introducing today would extend Special Exposure Cohort status to workers employed by the Department of Energy or its contractors at Rocky Flats according to the stringent requirements of the 2000 Act

As a result of this designation, a Rocky Flats worker suffering from one of the 22 listed cancers can receive benefits despite the inadequate records maintained by the Department of Energy and its contractors

My bill is a companion bill to the bipartisan House bill introduced by my friends, Congressman MARK UDALL and Congressman BOB BEAUPREZ from Colorado. I look forward to bipartisan support in the Senate.

I am also proud to introduce a separate bill, this one to re-inject a small dose of humanity into our Federal bureaucracy.

Betty Dick is an 83-year-old woman who has spent much of the past 25 years on property within the boundaries of Rocky Mountain National Park. Over the course of those 25 years, Betty Dick has become a cherished part of the Grand Lake community. She has been a good citizen and has been happy to share her family's beautiful cabin for civic events, and she has been a good neighbor to the National Park.

But now, the National Park Service believes that it is compelled to evict Betty Dick. My bill, and a bipartisan companion bill introduced by Congressman MARK UDALL and supported by Congressman TOM TANCREDO, will authorize and instruct the Park Service to allow Mrs. Dick to spend her last few summers at her cherished Grand Lake home.

Mrs. Dick has been living on this property subject to a 25 year lease with the Park Service. Fred Dick, Betty's husband, died in 1992. Mrs. Dick knows she doesn't have too many summers left, but she would like to spend them in her home.

The Park Service is apparently concerned that it does not have the authority to extend or renew this lease or it is worried that to do so would set a bad precedent. On this, I respectfully disagree with my friends at the Park Service. I think evicting an 83-year-old woman from her family cabin would set a bad precedent.

My bill would simply require the Secretary of the Interior, as boss of the National Park Service, to enter into an agreement that will allow Betty Dick to continue to occupy her family cabin and property within Rocky Mountain National Park for the rest of her life. Mrs. Dick will continue to pay the rent that has been due under the prior lease. Mrs. Dick's children and grandchildren will have no right to occupy the property after her death, and the cabin and property will then be managed by the Park Service.

I hope we haven't reached the point where we can't find a way to play a role in helping Betty Dick spend her last summers on the land that she loves.

I ask unanimous consent that the text of these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Betty Dick Residence Protection Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) before their divorce, Fred and Marilyn Dick, owned as tenants in common a tract of land that included the property described in section 5(b);

(2) when Fred and Marilyn Dick divorced, Marilyn Dick became the sole owner of the tract of land, but Fred Dick retained the right of first refusal to acquire the tract of land;

(3) in 1977, Marilyn Dick sold the tract to the United States for addition to Rocky Mountain National Park, but Fred Dick, asserting his right of first refusal, sued to cancel the transaction;

(4) in 1980, the lawsuit was settled through an agreement between the National Park Service, Fred Dick, and the heirs, successors, and assigns of Fred Dick;

(5) under the 1980 settlement agreement, Fred Dick and his wife, Betty Dick, were allowed to lease and occupy the 23 acres comprising the property described in section 5(b) for 25 years;

(6) Fred Dick died in 1992, but Betty Dick has continued to lease and occupy the property described in section 5(b) under the terms of the settlement agreement;

(7) Betty Dick's right to lease and occupy the property described in section 5(b) will expire on July 16, 2005, at which time Betty Dick will be 83 years old;

(8) Betty Dick wishes to continue to occupy the property for the remainder of her life and has sought to enter into a new agreement with the National Park Service that would allow her to continue to occupy the property;

(9) the National Park Service has not been willing to enter into a new agreement with Betty Dick and is demanding that she vacate the property by July 16, 2005;

(10) since 1980, Betty Dick—

(A) has consistently occupied the property described in section 5(b) as a summer residence;

(B) has made the property available for community events; and

(C) has been a good steward of the property;

(11) Betty Dick's occupancy of the property has not—

(A) been detrimental to the resources and values of Rocky Mountain National Park; or

(B) created problems for the National Park Service or the public; and

(12) under the circumstances, it is appropriate for Betty Dick to be allowed to continue her occupancy of the property described in section 5(b) for the remainder of her natural life under the terms and conditions applicable to her occupancy of the property since 1980.

SEC. 3. PURPOSE.

The purpose of this Act is to require the Secretary of the Interior to permit the continued occupancy and use of the property described in section 5(b) by Betty Dick for the remainder of her natural life.

SEC. 4. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the agreement between the National Park Service and Fred Dick entitled ''Settlement Agreement'' and dated July 17, 1980.

(2) MAP.—The term ''map'' means the map entitled ''Betty Dick Residence and Barn'' and dated January 2005.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 5. RIGHT OF OCCUPANCY.

(a) IN GENERAL.—The Secretary shall allow Betty Dick to continue to occupy and use the property described in subsection (b) for the remainder of the natural life of Betty Dick, subject to the requirements of this Act.

(b) DESCRIPTION OF PROPERTY.—The property referred to in subsection (a) is the land and any improvements to the land within the boundaries of Rocky Mountain National Park identified on the map as ''residence'', ''occupancy area'', and ''barn''.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the occupancy and use of the property identified in subsection (b) by Betty Dick shall be subject to the same terms and conditions specified in the Agreement.

(2) PAYMENT.—In exchange for the continued use and occupancy of the property, Betty

Dick shall annually pay to the Secretary an amount equal to 1/25 of the amount specified in section 3(B) of the Agreement.

(d) EFFECT.—Nothing in this Act—

(1) allows the construction of any structure on the property described in subsection (b) not in existence on November 30, 2004; or

(2) applies to the occupancy or use of the property described in subsection (b) by any person other than Betty Dick.

S. 585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rocky Flats Special Exposure Cohort Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.) (hereinafter in this section referred to as the ''Act'') was enacted to ensure fairness and equity for the civilian men and women who, during the past 50 years, performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies by establishing a program that would provide efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(2) The Act provides a process for consideration of claims for compensation by individuals who were employed at relevant times at various locations, but also included provisions designating employees at certain other locations as members of a special exposure cohort whose claims are subject to a less-detailed administrative process.

(3) The Act also authorizes the President, upon recommendation of the Advisory Board on Radiation and Worker Health, to designate additional classes of employees at Department of Energy facilities as members of the special exposure cohort if the President determines that—

(A) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(B) there is a reasonable likelihood that the radiation dose may have endangered the health of members of the class.

(4) It has become evident that it is not feasible to estimate with sufficient accuracy the radiation dose received by employees at the Department of Energy facility in Colorado known as the Rocky Flats site for the following reasons:

(A) Many worker exposures were unmonitored over the lifetime of the plant at the Rocky Flats site. Even in 2004, a former worker from the 1950s was monitored under the former radiation worker program of the Department of Energy and found to have a significant internal deposition that had been undetected and unrecorded for more than 50 years.

(B) No lung counter for detecting and measuring plutonium and americium in the lungs existed at Rocky Flats until the late 1960s. Without this equipment, the very insoluble oxide forms of plutonium cannot be detected, and a large number of workers had inhalation exposures that went undetected and unmeasured.

(C) Exposure to neutron radiation was not monitored until the late 1950s, and most of those measurements through 1970 have been found to be in error. In some areas of the plant the neutron doses were as much as 2 to 10 times as great as the gamma doses received by workers, but only gamma doses were recorded. The old neutron films are being re-read, but those doses have not yet been added to the workers' records or been used in the dose reconstructions for Rocky Flats workers carried out by the National Institute for Occupational Safety and Health.

(D) Radiation exposures for many workers were not measured or were missing and, as a result, the records are incomplete or estimated doses were assigned. There are many inaccuracies in the exposure records that the Institute is using to determine whether Rocky Flats workers qualify for compensation under the Act.

(E) The model that has been used for dose reconstruction by the Institute in determining whether Rocky Flats workers qualify for compensation under the Act may be in error. The default values used for particle size and solubility of the internally deposited plutonium in workers are subject to reasonable scientific debate. Use of erroneous values could substantially underestimate the actual internal doses for claimants.

(5) Some Rocky Flats workers, despite having worked with tons of plutonium and having known exposures leading to serious health effects, have been denied compensation under the Act as a result of potentially flawed calculations based on records that are incomplete or in error as well as the use of potentially flawed models.

(6) Achieving the purposes of the Act with respect to workers at Rocky Flats is more likely to be achieved if claims by those workers are subject to the administrative procedures applicable to members of the special exposure cohort.

(b) PURPOSE.—The purpose of this Act is to revise the Energy Employees Occupational Illness Compensation Program Act so as to include certain past and present Rocky Flats workers as members of the special exposure cohort.

SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE COHORT.

(a) IN GENERAL.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding at the end of paragraph (14) the following:

''(D) The employee was so employed as a Department of Energy employee or a Department of Energy contractor employee for a number of work days aggregating at least 250 work days before January 1, 2006, at the Rocky Flats site in Colorado.''.

(b) REAPPLICATION.—A claim that an individual qualifies, by reason of subparagraph (D) of section 3621(14) of that Act (as added by subsection (a)), for compensation or benefits under that Act shall be considered for compensation or benefits, notwithstanding any denial of any other claim for compensation with respect to that individual.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 76—EXPRESSING THE SENSE OF THE SENATE ON THE ANNIVERSARY OF THE DEADLY TERRORIST ATTACKS LAUNCHED AGAINST THE PEOPLE OF SPAIN ON MARCH 11, 2004

Mr. LIEBERMAN (for himself, Mr. ALLEN, Mr. DODD, and Mr. BIDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 76

Whereas on March 11, 2004, terrorists associated with the al Qaeda network detonated a total of 10 bombs at 6 train stations in and around Madrid, Spain, during morning rush hour, killing 191 people and injuring 2,000 others;

Whereas like the terrorist attack on the United States on September 11, 2001, the March 11, 2004, attacks in Madrid were an attack on freedom and democracy by an international network of terrorists;

Whereas the Senate immediately condemned the attacks in Madrid, joining with the President in expressing its deepest condolences to the people of Spain and pledging to remain shoulder to shoulder with them in the fight against terrorism;

Whereas the United States Government has continued to work closely with the Spanish Government to pursue and bring to justice those who were responsible for the March 11, 2004, attacks in Madrid;

Whereas the European Union, in honor of the victims of terrorism in Spain and around the world, has designated March 11 an annual European Day of Civic and Democratic Dialogue;

Whereas the people of Spain continue to suffer from attacks by other terrorist organizations, including the Basque Fatherland and Liberty Organization (ETA);

Whereas the Club of Madrid, an independent organization of democratic former heads of state and government dedicated to strengthening democracy around the world, is convening an International Summit on Democracy, Terrorism, and Security to commemorate the anniversary of the March 11, 2004, attacks in Madrid; and

Whereas the purpose of the International Summit on Democracy, Terrorism, and Security is to build a common agenda on how the community of democratic nations can most effectively confront terrorism, in memory of victims of terrorism around the world: Now, therefore, be it

Resolved, That the Senate—

(1) expresses solidarity with the people of Spain as they commemorate the victims of the despicable acts of terrorism that took place in Madrid on March 11, 2004;

(2) condemns the March 11, 2004, attacks in Madrid and all other terrorist acts against innocent civilians;

(3) welcomes the decision of the European Union to mark the anniversary of the worst terrorist attack on European soil with a Day of Civic and Democratic Dialogue;

(4) calls upon the United States and all nations to continue to work together to identify and prosecute the perpetrators of the March 11, 2004, attacks in Madrid;

(5) welcomes the initiative of the Club of Madrid in bringing together leaders and experts from around the world to develop an agenda for fighting terrorism and strengthening democracy; and

(6) looks forward to receiving and considering the recommendations of the International Summit on Democracy, Terrorism, and Security for strengthening international cooperation against terrorism in all of its forms through democratic means.

SENATE RESOLUTION 77—CONDEMNING ALL ACTS OF TERRORISM IN LEBANON AND CALLING FOR THE REMOVAL OF SYRIAN TROOPS FROM LEBANON AND SUPPORTING THE PEOPLE OF LEBANON IN THEIR QUEST FOR A TRULY DEMOCRATIC FORM OF GOVERNMENT

Mr. SANTORUM (for himself, Mr. BROWNBACK, Mr. ALLEN, Mr. DEMINT, Mr. BURR, and Ms. CANTWELL) submitted the following resolution; which was considered and agreed to:

S. RES. 77

Whereas since December 29, 1979, Syria has been designated a state sponsor of terrorism by the Secretary of State;

Whereas on December 12, 2003, the President signed the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (22 U.S.C. 2151 note), which declared the sense of Congress that the Government of Syria should halt its support for terrorism and withdraw its armed forces from Lebanon, endorsed efforts to secure meaningful change in Syria, and authorized the use of sanctions against Syria if the President determines that the Government of Syria has not met the performance criteria included in that Act;

Whereas the President has imposed the sanctions mandated by that Act, which prohibit the export to Syria of items on the United States Munitions List and the Commerce Control List, and has already imposed 2 of the 6 types of sanctions authorized by that Act, by prohibiting the export to Syria of products of the United States (other than food or medicine) and prohibiting aircraft of any air carrier owned or controlled by Syria to take off from or land in the United States;

Whereas the United Nations Secretary General, Kofi Annan, recently stated that Syria continues to maintain more than 14,000 troops in Lebanon;

Whereas United Nations Security Council Resolution 1559 (September 2, 2004) calls for the withdrawal of all foreign forces from Lebanon and for the disbanding and disarmament of all armed groups in Lebanon;

Whereas on February 14, 2005, the former Prime Minister of Lebanon, Rafik Hariri, and 18 others were assassinated in an act of terrorism in Beirut, Lebanon;

Whereas the Secretary of State recalled the United States Ambassador to Syria, Margaret Scobey, following the assassination of Rafik Hariri; and

Whereas, on February 28, 2005, the Prime Minister of Lebanon, Omar Karami, resigned, dissolving Lebanon's pro-Syrian Government: Now, therefore, be it

Resolved, That the Senate—

(1) condemns all acts of terrorism against innocent people in Lebanon and around the world;

(2) condemns the continued presence of Syrian troops in Lebanon and calls for their immediate removal;

(3) urges the President to consider imposing additional sanctions on Syria under the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (22 U.S.C. 2151 note); and

(4) supports the people of Lebanon in their quest for a truly democratic form of government.

SENATE RESOLUTION 78—RECOGNIZING AND HONORING THE LIFE OF ARTHUR MILLER

Mr. HATCH (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 78

Whereas the late Arthur Miller wrote some of the most revered works in the American dramatic canon including All My Sons, After the Fall, The Crucible, The Price, The American Clock, A View from the Bridge, The Ride Down Mt. Morgan, and Death of A Salesman;

Whereas Arthur Miller received the highest honors for artistic accomplishment and distinguished intellectual achievement in the humanities in this country, the Kennedy Center Honors and the National Endowment for the Humanities' Jefferson Lectureship;

Whereas Arthur Miller received every major award given to playwrights in the United States, including the Pulitzer Prize, the Tony Award, the Drama Desk, and the Drama Critics Circle;

Whereas Arthur Miller, through his service to the Dramatists Guild of America, has fought for the freedom of American playwrights to have their works performed as they intended and given all the protection the law can afford them;

Whereas Arthur Miller, through his service to PEN, the association of Poets, Essayists and Novelists, has fought for the freedom of imprisoned writers all over the world;

Whereas Arthur Miller's plays are taught in virtually every high school and college in the United States, and his new plays have been produced on Broadway for more than half a century;

Whereas Arthur Miller wrote about the lives and longings of American working men and women with a power and clarity unparalleled in modern literature;

Whereas Arthur Miller, in writing about ''little men'' as his heroes were called in the beginning, proved that little men do indeed suffer tragic losses, and that to defend or regain their dignity, they will lay down their lives as nobly as any king ever did;

Whereas Arthur Miller wrote about our indestructible will to achieve our humanity, about our fear of being torn away from what and who we are in this world, and about our fear of being displaced and forgotten;

Whereas Arthur Miller has maintained his vision and claimed his victory as the preeminent man of letters in the American theater; and

Whereas Arthur Miller enjoyed a long and luminous career before he died at the age of 89 on February 10, 2005, Now, therefore, be it:

Resolved, That the Senate—

(1) recognizes the extraordinary contributions of the late Arthur Miller for his service to the Nation in the theater, in literature, and in his advocacy of the freedom to speak and write with conviction and courage;

(2) honors him as a great American literary pioneer; and

(3) expresses its deepest condolences upon his death to his family members and his friends.

Mr. HATCH. Mr. President, I rise today to pay tribute to the legendary playwright Arthur Miller, who passed away on February 10, 2005 at the age of 89.

Anyone who has experienced ''Death of a Salesman,'' ''A View from the Bridge,'' ''The Crucible,'' or any of his innumerable masterpieces would certainly agree that Arthur Miller established himself as one of the preeminent American playwrights of our time. A literary genius may have left us, but his work will live forever, from Broadway to the local high school or college theater.

Today my colleague from Massachusetts and I submit a resolution recognizing the genius of this literary giant, a man who not only captivated our souls with his art but also motivated us to protect the freedom to speak and write with conviction and courage.

I do not want to take up the Senate's time with a long biographical or literary commentary on the life and works of Arthur Miller because I know I would inevitably fail to do justice to him. Instead, I would like to share a personal experience that demonstrated the amazing and unique qualities of this wonderful man.

As some in the Senate will remember, one of Arthur Miller's last public speaking appearances was at a hearing before the Judiciary Committee last year, at which he advocated passage of the Hatch-Kennedy Playwrights Licensing Antitrust Initiative Act.

The day of the hearing, I had the opportunity to meet privately with Mr. Miller in my Senate office. Though well into his eighties, he spoke with passion and eloquence about the critical importance of live theater and writers to social, intellectual, and political discourse in our country. He also demonstrated his delightful—and occasionally devilish—wit and prodigious intelligence, both of which he had retained in extraordinary abundance.

Although we came from very different backgrounds, and radically different political perspectives, it was an honor and a sincere pleasure to come to know—however briefly—a man of his stature, accomplishments, and surpassing intellect.

Our lives were enriched by Arthur Miller, and we—as individuals, as a people, and as a Nation—are diminished by the passing of so magnificent an American talent. He will be sorely missed, and will be remembered with reverence and affection by those—like me—whose lives he touched.

I hope that my colleagues will join me and Senator KENNEDY—who is the leading cosponsor of this resolution—in recognizing and honoring the life and accomplishments of Arthur Miller by supporting swift passage of this resolution.

I ask unanimous consent that the remarks of Arthur Miller before the Senate Judiciary Committee on April 28, 2004, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. Chairman. Members of the Committee. It is indeed an honor to appear before you today in support of S. 2349, The Playwrights Licensing Antitrust Initiative Act of 2004.

In preparing for this testimony today, I am reminded of Muriel Humphrey's admonishment to her husband: ''Hubert, a speech does not need to be eternal to be immortal.'' I will take that advice to heart as I testify today.

It has been some time since I was last asked to testify before Congress. But, I have to tell you, today I am actually happy to appear on behalf of what I believe is truly an important topic worthy of Congressional debate and action—the future of the American theater.

I have been blessed to be lucky enough to be a successful playwright. Many of my plays, I am proud to say, have won critical acclaim—Death of a Salesman and The Crucible won a Pulitzer and a Tony award respectively.

I raise these plays, and my success, not to brag, but to emphasize an important point: I and my colleagues before you today are here not for ourselves, but for others. We are speaking on behalf of the up and coming playwrights: The Arthur Millers, the Stephen Sondheims and the Wendy Wassersteins

as young playwrights. Indeed, the American theater risks losing the next generation of playwrights to other media and opportunities as the pressures on playwrights increase and their power to protect their economic and artistic interests diminish. The legislation we are advocating isn't for us, it's for them. And it's for the theater-going public.

The legislation introduced by you, Chairman Hatch and Senator Kennedy, is meant to keep the legacy of aspiring playwrights who write for the theater alive. It will help ensure that American playwrights, through the theater, can speak to the hearts and minds of the audience. That we can challenge social morays, ideology, beliefs, or simply entertain. Drama is one of civilization's greatest art forms and we must do all that we can to promote its vitality.

The American theater has undergone enormous changes over the years. From its entrepreneurial start it has become increasingly dominated by corporate interests. Sure, business is changing in virtually every sector of our economy and there is no reason that the theater should be immune from business pressures.

But, unfortunately, in the midst of these increasing pressures, only one entity does not have a seat at the bargaining table: the playwrights. The status of the playwright is difficult to discern as it has fallen under the long shadow of questionable and conflicting legal opinions. The result is that all other entities have the collective power and ability to fight for their rights. As a result, it is the playwright who gets squeezed.

The Playwrights Licensing Antitrust Initiative Act of 2004 would provide a very limited legislative fix that would allow for the standard form contract that was last negotiated in 1982 to be updated to take account of today's market realities and intellectual property protection climate. It does not force producers to hire any playwrights, but it does allow playwrights with a willing producer to protect their economic and artistic interests.

Today many new playwrights are presented with take-it-or-leave-it contracts. In their hunger to get their plays produced, many have no choice. Others, facing the economic pressures that face all-too-many people in today's economy, are abandoning their dreams of writing for the theater as they go to Hollywood or write for other media.

Some may say that this is just basic economics. But, the legislation the Chairman and Senator Kennedy have introduced is not intended to change the laws of economics. It simply says that playwrights should have a seat at the table. Failure to pass the legislation will continue the unfair bargaining situation that the playwrights find themselves in and not only will the playwright and the theater suffer, but society as a whole.

It was Senator Kennedy's brother, President Kennedy, who once said: ''I look forward to an America which will reward achievement in the arts as we reward achievement in business or statecraft. ''

Unfortunately, under today's legal shadows, the up and coming playwrights must offer their wares at a discount.

I understand that antitrust exemptions are not easy to come by. And I believe that amending our laws should not be done at the drop of a hat.

But, where there the national interest demands that change occur, I believe it is appropriate.

Mr. Chairman. Members of the Committee. I urge your prompt approval of this legislation.

STATEMENT OF SENATOR KENNEDY IN SUPPORT OF THE RESOLUTION HONORING ARTHUR MILLER

Mr. KENNEDY. Mr. President, it is my privilege to join my colleague from Utah in sponsoring this resolution to honor one of America's foremost playwrights. Arthur Miller spoke to all of us about the quiet struggles in each life and the dignity in those struggles.

Arthur Miller was a soft-spoken man whose voice was heard around the world. It was a voice of courage, insight, candor, and integrity, and the quality of the arts in America was greatly enriched by his extraordinary plays, as anyone who has had the opportunity to attend a performance of Death of a Salesman well knows. The hero of that play, Willy Loman, became an American icon—the struggling family man in lifelong pursuit of the American dream.

At one point in the first act of the play, a character says of Willy Loman,

I don't say he's a great man. Willy Loman never made a lot of money. His name was never in the paper. He's not the finest character that ever lived. But he's a human being, and a terrible thing is happening to him. So attention must be paid. He's not to be allowed to fall into his grave like an old dog. Attention, attention must be finally paid to such a person.

That sums up much of what we do in public life. We try to help those who need our help the most. We insist that attention must be finally paid to such persons in our society, and we try to make it happen, and Arthur Miller helps us to understand why.

In his long and brilliant career, he earned wide public and critical acclaim for his work. He was honored with the Pulitzer Prize, the Drama Critics' Circle Award, and the Tony Award. He also received the Kennedy Center Honors Award for lifetime achievement as a playwright. The National Endowment for the Humanities selected him to present the prestigious Jefferson Lecture, an honor given to writers and historians of extraordinary achievement.

Arthur Miller was a gifted writer, and he was also a passionate advocate of providing greater encouragement for emerging writers in our society. Last year, he testified before the Judiciary Committee in support of the Playwright Licensing Antitrust Initiative, which would provide important new protections for the artists who actually create the plays and musicals that are such an extraordinary part of the nation's modem life.

It was the third time that Arthur Miller had testified before Congress. He had previously appeared before the infamous House Unamerican Activities Committee, and before the Senate on behalf of literary and journalistic freedoms around the world.

Senator Hatch and I were both impressed by the articulate passion of this unique American artist. I look forward to working with Senator Hatch and many other colleagues in Congress to realize the goals that Arthur Miller so eloquently described in his testimony, and encourage more creative artists in our country to write their stories and have them presented on the stages of America.

American theater is admired and respected throughout the world and we should honor those whose genius and hard work have contributed to that success.

This resolution honoring the life of Arthur Miller is an opportunity for all of us to express our appreciation for the extraordinary and eloquent gift he brought the Nation. His great works have enriched the lives of all Americans, and of theater-lovers around the world. I urge my colleagues to support this resolution.

SENATE CONCURRENT RESOLUTION 16—CONVEYING THE SYMPATHY OF CONGRESS TO THE FAMILIES OF THE YOUNG WOMEN MURDERED IN THE STATE OF CHIHUAHUA, MEXICO, AND ENCOURAGING INCREASED UNITED STATES INVOLVEMENT IN BRINGING AN END TO THESE CRIMES

Mr. BINGAMAN (for himself, Mr. CORNYN, Mr. CORZINE, Mr. DURBIN, Mr. ENSIGN, Mr. FEINGOLD, Mrs. FEINSTEIN, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, and Mrs. MURRAY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 16

Whereas the Mexican cities of Ciudad Juárez and Chihuahua have been plagued with the abduction, sexual assault, and brutal murders of more than 370 young women since 1993;

Whereas there have been at least 30 murders of women in Ciudad Juárez and the city of Chihuahua since 2004;

Whereas at least 137 of the victims were sexually assaulted prior to their murders;

Whereas more than half of the victims are women and girls between the ages of 13 and 22, and many were abducted in broad daylight in well-populated areas;

Whereas these murders have brought pain to the families and friends of the victims on both sides of the border as they struggle to cope with the loss of their loved ones;

Whereas many of the victims have yet to be positively identified;

Whereas the perpetrators of most of these heinous acts remain unknown;

Whereas the Mexican Federal Government has taken steps to prevent these abductions and murders in Ciudad Juárez, including setting up a commission to coordinate Federal and State efforts, establishing a 40-point plan, appointing a special commissioner, and appointing a special prosecutor;

Whereas the Federal special prosecutor, in her ongoing review of the Ciudad Juárez murder investigations, found evidence that over 100 police, prosecutors, forensics experts, and other State of Chihuahua justice officials failed to properly investigate the crimes, and recommended that they be held accountable for their acts of negligence, abuse of authority, and omission;

Whereas in 2003 the El Paso Field Office of the Federal Bureau of Investigation and the El Paso Police Department began providing Mexican Federal, State, and municipal law enforcement authorities with training in investigation techniques and methods;

Whereas the United States Agency for International Development has begun providing assistance to the State of Chihuahua for judicial reform;

Whereas the government of the State of Chihuahua has jurisdiction over these crimes;

Whereas the Governor and Attorney General of the State of Chihuahua have expressed willingness to collaborate with the Mexican Federal Government and United States officials in addressing these crimes;

Whereas the Department of State has provided consular services on behalf of the American citizen and her husband who were tortured into confessing to one of the murders;

Whereas Mexico is a party to the following international treaties and declarations that relate to abductions and murders: the Charter of the Organization of American States, the American Convention on Human Rights,

the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the United Nations Declaration on Violence Against Women, the Convention on the Rights of the Child, the Convention of Belem do Para, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance, and the United Nations Declaration on the Protection of All Persons From Enforced Disappearance; and

Whereas continuing impunity for these crimes is a threat to the rule of law in Mexico: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns the ongoing abductions and murders of young women in Ciudad Juárez and the city of Chihuahua in the State of Chihuahua, Mexico, since 1993;

(2) expresses its sincerest condolences and deepest sympathy to the families of the victims of these murders;

(3) recognizes the courageous struggle of the victims' families in seeking justice for the victims;

(4) urges the President and Secretary of State to incorporate the investigative and preventative efforts of the Mexican Government in the bilateral agenda between the Governments of Mexico and the United States and to continue to express concern over these abductions and murders to the Government of Mexico;

(5) urges the President and Secretary of State to continue to express support for the efforts of the victims' families to seek justice for the victims, to express concern relating to the continued harassment of these families and the human rights defenders with whom they work, and to express concern with respect to impediments in the ability of the families to receive prompt and accurate information in their cases;

(6) supports efforts to identify unknown victims through forensic analysis, including DNA testing, conducted by independent, impartial experts who are sensitive to the special needs and concerns of the victims' families, as well as efforts to make these services available to any families who have doubts about the results of prior forensic testing;

(7) condemns the use of torture as a means of investigation into these crimes;

(8) encourages the Secretary of State to continue to include in the annual Country Report on Human Rights of the Department of State all instances of improper investigatory methods, threats against human rights activists, and the use of torture with respect to cases involving the murder and abduction of young women in the State of Chihuahua;

(9) encourages the Secretary of State to urge the Government of Mexico and the State of Chihuahua to review the cases of murdered women in which those accused or convicted of murder have credibly alleged they were tortured or forced by a state agent to confess to the crime;

(10) strongly recommends that the United States Ambassador to Mexico visit Ciudad Juárez and the city of Chihuahua for the purpose of meeting with the families of the victims, women's rights organizations, and Mexican Federal and State officials responsible for investigating these crimes and preventing future such crimes;

(11) encourages the Secretary of State to urge the Government of Mexico to ensure fair and proper judicial proceedings for the individuals who are accused of these abductions and murders and to impose appropriate punishment for those individuals subsequently determined to be guilty of such crimes;

(12) encourages the Secretary of State to urge the State of Chihuahua to hold accountable those law enforcement officials whose failure to adequately investigate the murders, whether through negligence, omission, or abuse, has led to impunity for these crimes;

(13) recognizes the special prosecutor has begun to review cases and encourages the expansion of her mission to include the city of Chihuahua;

(14) strongly supports the work of the special commissioner to prevent violence against women in Ciudad Juárez and Chihuahua City;

(15) condemns all senseless acts of violence in all parts of the world and, in particular, violence against women; and

(16) expresses the solidarity of the people of the United States with the people of Mexico in the face of these tragic and senseless acts.

AMENDMENTS SUBMITTED AND PROPOSED

SA 138. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 138. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 500, strike lines 7 through 11, and insert the following:

(1) by redesignating subsection (*l*) as subsection (n); and

(2) by inserting after subsection (k) the following:

''(*l*) Notwithstanding any other provision of this section, the benefits required to be provided by a last signatory operator under chapter 99 of the Internal Revenue Code of 1986, may not be terminated or modified by any court in a proceeding under this title.

''(m) If the debtor, during the 180-day period ending

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, March 9, 2005, at 10 a.m. to conduct a hearing on ''The State of the Securities Industry.''

Concurrent with the hearing, the committee intends to vote on the nomination of Mr. Ronald A. Rosenfeld, of Oklahoma, to be a director of the Federal Housing Finance Board.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, March 9, at 10 a.m.

The purpose of the hearing is to consider the nominations of Patricia Lynn Scarlett to be Deputy Secretary of the Interior and Jeffrey Clay Sell to be Deputy Secretary of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, March 9, 2005, at 9:30 a.m. to conduct a business meeting regarding S. 131, Clear Skies Act of 2005. The hearing will be held in SD–406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open executive session during the session on Wednesday, March 9, 2005, at 10 a.m., to consider an original bill entitled, Personal Responsibility and Individual Development for Everyone (PRIDE) Act, and to consider favorably reporting the nominations of Harold Damelin, to be Inspector General, Department of the Treasury, Washington, DC, and, Raymond Wagner, to be a member of the Internal Revenue Service Oversight Board, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions meet in executive session during the session of the Senate on Wednesday, March 9, 2005, at 10 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, March 9, 2005, at 10 a.m. for a hearing to consider the Department of Homeland Security's budget submission for fiscal year 2006.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, March 9, 2005 at a time to be determined, to hold a business meeting to consider the nomination of Michael Jackson to be Deputy Secretary, Department of Homeland Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 9, 2005, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting on S. 147, the Native Hawaiian Government Reorganization Act, and S. 536, a bill to make technical corrections to laws relating to Native Americans, and for other purposes, to be followed immediately by an oversight hearing on Indian Trust Reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, March 9, 2005, for a joint hearing with the House of Representatives' Committee on Veterans' Affairs, to hear the legislative presentation of the Veterans of Foreign Wars.

The hearing will take place in room 216 of the Hart Senate Office Building at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 9, 2005 at 3 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities be authorized to meet during the session of the Senate on March 9, 2005, at 9:30 a.m., in open session to receive testimony on the Department of Defense Science and Technology Budget and Strategy.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent Lauryn Douglas of my office be granted the privilege of the floor for the duration of today's proceedings.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Robert Culbertson, a fellow in Senator LIEBERMAN's office, be granted floor privileges for the introduction of the Children and Media Research Advancement Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—S. 570

Mr. FRIST. Mr. President, I understand there is a bill at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 570) to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

Mr. FRIST. I now ask for its second reading and, in order to place the bill on the Calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will be read for the second time on the next legislative day.

ORDERS FOR THURSDAY, MARCH 10, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, the Senate adjourn until 9:30 a.m. on Thursday, March 10. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business with the time until 11 a.m. equally divided between the two leaders or their designees; provided that at 11 a.m. the Senate resume consideration of S. 256, the Bankruptcy Reform Act, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the Bankruptcy Reform Act. Under the previous order, upon returning to the bill at 11 a.m., the Senate will proceed to a series of stacked rollcall votes on two Kennedy amendments and the Akaka amendment to the bill. We will then have an additional series of votes a little later in the afternoon which will culminate with a vote on final passage.

I want to thank my colleagues for their work on the bill. The schedule for the completion of this bill was worked out on both sides and will allow us to finish the bill at a reasonable hour tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:32 p.m., adjourned until Thursday, March 10, 2005, at 9:30 a.m.